

**FINAL REPORT**  
**OF**  
**THE HOUSING AND PROPERTY**  
**CLAIMS COMMISSION**



**2007**  
**Pristina**

# TABLE OF CONTENTS

Introduction

Executive Summary

Table of Legislation

Table of Abbreviations

## CHAPTER 1

HISTORICAL BACKGROUND TO ESTABLISHMENT OF THE HOUSING AND PROPERTY CLAIMS COMMISSION

1. **Historical Background and Developments in Kosovo**
2. **The NATO Intervention**
3. **UNMIK's Response to Kosovo's Housing and Property Crises**

## CHAPTER 2

THE HOUSING AND PROPERTY CLAIMS COMMISSION

1. **Establishment**
2. **Jurisdiction**
3. **Composition and Membership**
4. **Sessions of the HPCC**

## CHAPTER 3

THE PROVISION OF ADMINISTRATIVE AND LEGAL SUPPORT SERVICES TO THE HPCC

1. **Administrative Support and Management**

- 2. Legal Support**
- 3. Relationship with UNMIK**

#### CHAPTER 4

##### THE APPLICABLE LEGAL FRAMEWORK AND PROCEDURES

- 1. The Applicable Law in Kosovo**
- 2. Laws Applicable to the Resolution of Property Claims**
  - (i) UNMIK Regulations
  - (ii) Additional Rules and Instructions of the HPCC
  - (iii) Domestic laws
  - (iv) Applicable Human Rights Framework

#### CHAPTER 5

##### COLLECTION AND REGISTRATION OF CLAIMS

- 1. The Claim Form**
- 2. Procedure for Submitting claims**
- 3. Statistics on Number of Claims Registered**
- 4. Notification of Claims and Publication**

#### CHAPTER 6

##### CLAIMS INVESTIGATION AND PROCESSING

- 1. Preliminary Review**
- 2. Substantive Review**
- 3. Access to Property Records and Verification of Documents**

- 4. Drafting Legal Submissions on Claims for the HPCC**
- 5. Withdrawal of Claims**
- 6. Referral of Claims to the HPCC and Role of the Registry**

## CHAPTER 7

### DECISIONS OF THE HPCC

- 1. Applicable Procedures**
  - (i) Mass Claims Processing**
  - (ii) Evidentiary Procedures**
  - (iii) Delegation of Authority to Review Claims**
- 2. Proceedings before the HPCC**
- 3. Decisions of the HPCC**
- 4. Form of Decisions**
- 5. HPCC Orders and Remedies**
- 6. Correction of Administrative Errors in the Decision Making Process**

## CHAPTER 8

### SERVICE AND IMPLEMENTATION OF HPCC DECISIONS

- 1. Service of Decisions**
- 2. Publication of Decisions**
- 3. Procedure for Implementation of Decisions**

## CHAPTER 9

### RECONSIDERATION REQUESTS

- 1. Procedure and Grounds for Filing Reconsideration Requests**
- 2. Processing Reconsideration Requests**
- 3. Number and Nature of Reconsideration Requests Filed**

## **CHAPTER 10**

### **CONCLUDING REMARKS**

## **ANNEXES**

ANNEX I: Profiles of Members of the Housing and Property Claims Commission.

ANNEX II: UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission;  
UNMIK Regulation 2000/60 on the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission.

ANNEX III: Additional Rules of the Housing and Property Claims Commission.

ANNEX IV: Executive Directors of the HPD and Registrars.

ANNEX V: Statistics of Claims and Decisions

## **TABLE OF LEGISLATION**

1. UNMIK Regulation 1999/23 on the Establishment of the Housing and Property Directorate and Housing and Property Claims Commission
2. UNMIK Regulation 2000/60 on the Rules of Procedure and Evidence of the Housing and Property Directorate and Housing and Property Claims Commission
3. Clarification by the SRSG of the Secretary-General of UNMIK Regulation 2000/60 of 31 October 2000
4. Administrative Direction 2000/45 Implementing UNMIK Regulation 1999/23 On the Establishment of the Housing and Property Directorate and Housing and Property Claims Commission
5. The Law on Housing Relations (Official Gazette of the SAP Kosovo, No. 11/83, 29/86, 42/86)
6. Law on Co-ownership of an Apartment (Official Gazette of the SAP Kosovo, No. 43/80, 22/87)
7. Law on Construction of Annexes to Buildings and the Conversion of Common Premises into Apartments (Official Gazette of the SAP Kosovo, No. 14/88)
8. Law on the Transfer of Real Property (Official Gazette of SAP, Kosovo, No. 45/81, 29/86, 26/88)
9. Law on the Registration of Real Properties in Social Ownership (Official Gazette of SAP, Kosovo, No. 37/71)
10. Law on Special Conditions Applicable to Real Estate Transactions (Official Gazette of the Republic of Serbia, No. 30/89).
11. Law on Housing 1992 (Official Gazette of the Republic of Serbia, No. 50/92)

## **TABLE OF ABBREVIATIONS**

CCPU	Central Case Processing Unit of the HPD
CRPC	Commission for Real Property Claims of Displaced Persons and Refugees in Bosnia and Herzegovina
DCA	Department of Civil Administration, UNMIK
DPKO	Department of Peace Keeping Operations of the United Nations
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EU	European Union
EAR	European Agency for Reconstruction
FRY	Federal Republic of Yugoslavia
fyROM	former Yugoslav Republic of Macedonia
HPD	Housing and Property Directorate
HPCC	Housing and Property Claims Commission
IDPs	Internally Displaced Persons
KCA	Kosovo Cadastre Agency, PISG
KCB	Kosovo Consolidated Budget
KFOR	Kosovo Force, NATO
KPA	Kosovo Property Agency
KPCC	Kosovo Property Claims Commission
KPS	Kosovo Police Service, UNMIK
KTA	Kosovo Trust Agency, UNMIK
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization

OLA	Office of the Legal Advisor, UNMIK
OSCE	Organization for Security and Cooperation in Europe
PISG	Provisional Institutions of Self Government
SC	Security Council
SRSg	Special Representative of the Secretary-General of the United Nations
UN	United Nations
UNCHS	United Nations Centre for Human Settlements
UNOPS	United Nations Office for Project Services
UN-Habitat	United Nations Human Settlement Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
UNOB	United Nations Office in Belgrade



## INTRODUCTION

Kosovo has been one of the few post-conflict settings to date in which the United Nations has engaged extensively in property restitution, having established and mandated an independent body to resolve conflict related property disputes and enforce property rights outside the framework of the national judicial system.<sup>1</sup>

The Housing and Property Claims Commission is an independent quasi-judicial body established by the United Nations Interim Administration Mission in Kosovo (UNMIK) in November 1999. It was mandated to ensure an efficient and effective resolution of residential property disputes arising out of the 1999 armed conflict in Kosovo. The HPCC commenced adjudicating claims in January 2001 and at the time of writing this report, it has effectively implemented its mandate; some 29,000 property disputes have been decided, and to date 98.5% of HPCC decisions have been implemented in favour of property right holders. This accomplishment is noteworthy and has made a significant contribution to assisting dispossessed property right holders gain repossession of their homes. It has also contributed to the ideals espoused in Security Council Resolution 1244 (SC 1244) and contributed to post conflict rehabilitation. The resolution of claims over the homes of refugees and displaced persons in Kosovo has ensured that thousands of claimants and their families who were dispossessed of their homes as a result of discrimination or displacement have been given an opportunity to return home, or to dispose of their property in accordance with law, thereby fulfilling one of the primary goals set out in SC1244, and UNMIK Regulation 1999/23 establishing the HPCC process.

---

<sup>1</sup> While a similar mechanism was also established in the aftermath of the war in Bosnia-Herzegovina, this mechanism was based on the Dayton Accords and the UN was not directly involved in its implementation. There are also substantial differences in the legislative framework.

## **EXECUTIVE SUMMARY**

This Report is prepared by the Housing and Property Claims Commission (the HPCC) and contains an expansive account of the work of the HPCC in relation to the resolution of property claims which fell within its exclusive jurisdiction. It sets out the background to the establishment of the HPCC, and describes its mandate, composition and functions. Comprehensive coverage is given to the legal framework that governed the resolution of property claims. The report is an administrative document and as such is not intended to provide any explanation or commentary on the decisions taken by the HPCC in its quasi-judicial capacity. The HPCC wishes to thank Ms. Margaret Cordial BL for her assistance in preparing the report and the HPD for the verification of the statistical information.

Chapter 1 presents the background to the establishment of the HPCC process. It outlines historical developments in Kosovo from the loss of autonomy in 1989 to legislative enactments during the early 1990's which imposed restrictions upon the enjoyment of property rights affecting various ethnic groups. It considers the environment which presented in Kosovo in June 1999, and the myriad of complex legal challenges and rule of law issues, including property right challenges, with which UNMIK was confronted. It considers the mandate conferred on the United Nations Interim Administration in Kosovo ("UNMIK") and the Kosovo Force ("KFOR") which included responsibility for ensuring safe and free return of all refugees and displaced persons to their homes.

Chapter 2 sets out the adjudicative jurisdiction of the HPCC to resolve claims for residential property and chapter 3 describes the role of the Housing and Property Directorate (the HPD) which was mandated to collect claims and provide administrative and legal support services to the HPCC.

Chapter 4 describes the legal framework relevant to the resolution of claims and enumerates the key substantive and procedural provisions as set down in UNMIK Regulations and subsidiary laws, domestic laws, HPCC instructions and international human rights standards.

Chapters 5 and 6 consider the claim intake and the nature and number of claims collected. They describe the pre-decision making process, which was concerned with investigating claims, notifying parties, verifying documents and drafting legal submissions and recommendations. The procedure which regulated the processing of claims and the HPCC's instructions and jurisprudence are also considered.

Chapter 7 describes the decision making process. It considers the HPCC's rules of procedure and techniques adopted to deal with its voluminous case load. The HPCC had to ensure due process and at the same time the speedy and efficient handling of claims. The format of decisions and the orders, ancillary relief and remedies which could be granted in respect of each category of claim are also considered in detail in this chapter.

Chapter 8 focuses on the implementation of HPCC decisions which fell under the competence of the HPD. The HPD was equipped with implementation powers including authority to deal with illegal occupation of property and to enforce fully and ensure compliance with legally binding decisions. The HPCC/HPD process was explicitly empowered under its enabling legislation to implement final and binding decisions, and to do so through the execution of eviction orders, where necessary. The chapter considers the application of these implementation techniques which included the eviction or illegal occupants, or placing property under temporary administration. Detailed statistics on the implementation of HPD/HPCC decisions are also included.

Chapter 9 considers the reconsideration procedure from the perspective of the processing and adjudication of requests for reconsideration of HPCC decisions.

Chapter 10 contains concluding remarks of the members of the HPCC on the process and recommends the development of a clear institutional and policy framework for addressing all legitimate property issues, and ensuring equality in relation to the treatment of claimants who have suffered property rights violations in future post conflict settings.

## **CHAPTER 1**

### **HISTORICAL BACKGROUND TO ESTABLISHMENT OF THE HOUSING AND PROPERTY CLAIMS COMMISSION**

#### **1. Historical Background and Developments in Kosovo**

Kosovo was one of the eight constituent units of former Yugoslavia. Under the 1974 Yugoslav Constitution it was declared to be an autonomous province of Serbia with its own administration, assembly and judiciary, and it was a member of both Serbian and federal institutions.

As a result of nationalization in 1945, property was declared socially owned and much private land and property was transferred to Socially Owned Enterprises (SOEs). As at 1999, 43% of property was non-private, being either socially owned (belonging to socially owned enterprises) or owned by the state (including lands belonging to municipalities and central government for the provision of public facilities such as roads, schools, hospitals etc.). Private property, which comprised 57% (belonging to natural persons, companies and religious entities),<sup>2</sup> was made up of properties which were not nationalized and socially owned apartments which were privatized under the 1992 Law on Housing.<sup>3</sup>

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 which up to the early 1990's constituted the primary source of residential housing. These apartments were built and administered by either SOEs or Publicly Owned Enterprises (POEs) and were allocated to employees of these enterprises in order to meet their housing needs and were subsidized by obligatory contributions from employees' salaries.

Employees were allocated permanent rights of use over these apartments, known as "occupancy rights" which was a statutory right that derived from the Law on Housing Relations.<sup>4</sup> An occupancy right was less than an ownership right, but considerably more

---

<sup>2</sup> There was only a very small number of privately owned apartments, comprising those which had not been nationalized in the 1950s or 1960s, and socially owned apartment that had been privatized before the conflict pursuant to the provisions of the 1992 Law on Housing (Official Gazette of the Republic of Serbia No. 50/92). For a detailed and historical account of social ownership of property see Perritt, H., *Resolving Claims when Countries Disintegrate: The Challenge of Kosovo*, in Vol. 80, *Chicago-Kent Law Review*, 119 (2005).

<sup>3</sup> Law on Housing, Official Gazette of the Republic of Serbia, No. 50/92 (hereinafter "the Law on Housing"). See the report of World Bank, entitled 'Land and Property Rights in Kosovo', 2006.

<sup>4</sup> Official Gazette of the SAPK, No. 11/83, 29/86, 42/86.

than a leasehold right.<sup>5</sup> Occupancy rights could only be terminated in accordance with the provisions of the Law on Housing Relations.<sup>6</sup> This regime by and large accommodated the housing needs of all ethnic groups in urban areas until the loss of autonomy in 1990. Only in 1992 was privatization introduced with the enactment of the Law on Housing which allowed individual occupancy right holders to purchase their apartments by converting their occupancy rights into fully transferable property rights.<sup>7</sup>

On 23 March 1989 constitutional changes granting Belgrade control over Kosovo's internal affairs eventually saw it stripped of its entitlement to self-government under the Yugoslav Constitution, and rendered it an integral part of the Republic of Serbia.<sup>8</sup> The Kosovo Albanian population demonstrated against the loss of autonomy by organizing mass strikes.<sup>9</sup> The Socialist Republic of Serbia reacted on 22 March 1990 by introducing a series of laws<sup>10</sup> and administrative measures known as "special measures"<sup>11</sup> which resulted in many Kosovo Albanians being dismissed from their positions in public companies and subsequently losing their property rights to socially owned apartments,<sup>12</sup> which were reallocated to Kosovo Serbs.<sup>13</sup> As a result of these developments it was primarily the Serb occupancy right holders who were in a position to convert their occupancy rights into ownership rights by purchasing the apartment from the allocation right holder under the privatization process introduced by the Law on Housing in 1992.<sup>14</sup>

---

<sup>5</sup> See further the provisions of the Law on Housing Relations, Official Gazette of the SAPK, No. 11/83, 29/86, 42/86.

<sup>6</sup> An occupancy right could be terminated where the occupancy right holder failed to use the apartment for his or her housing needs for a continuous period of six (6) months or more, without justified grounds. Justified grounds included military service, serving a period of imprisonment, working abroad, or absence due to education or medical treatment, see Article 47, LHR. Pursuant to the LHR such termination could take place upon dismissal from work due to a serious violation of duty or a criminal act. However in Kosovo dismissals from employment were rare and this provision was rarely relied upon. On completing ten (10) years of employment with the enterprise or twenty (20) years in total, the occupancy right could not be revoked under any circumstances. No one could have more than one occupancy right or have another residence while being an occupancy right holder.

<sup>7</sup> The purchase price was off-set by the occupancy right holders contributions made to the housing fund during his or her lifetime.

<sup>8</sup> See also the report of the OSCE Mission in Kosovo entitled "Kosovo/Kosova: As seen as told" Part 1 & II"; at page 27; The report of the Independent International Commission on Kosovo entitled "The Kosovo Report", October 2000. The Commission, which was chaired by Justice Richard Goldstone, a Judge of the Constitutional Court of South Africa, examined key developments prior to, during and after the 1999 armed conflict in the region. The Commission was the initiative of the Prime Minister of Sweden, Mr. Göran Persson, and it was endorsed by the Secretary-General of the United Nations, available at [www.kosovocommission.org](http://www.kosovocommission.org).

<sup>9</sup> See the report of the Independent International Commission, *op. cit.* note 8 at page 14 and the report of the OSCE Mission in Kosovo, *op. cit.*, note 8 at page 27.

<sup>10</sup> For example, the Law on Special Conditions Applicable to Real Estate Transactions, Official Gazette of the Republic of Serbia, No. 30/89.

<sup>11</sup> The so-called Programme for the Implementation of Peace, Freedom, Equality, Democracy and Prosperity of the Socialist Autonomous Province of Kosovo.

<sup>12</sup> *Ibid.*

<sup>13</sup> See the report of the OSCE Mission in Kosovo entitled "*The Impending Property Crises in Kosovo*" 25 September 2000; Leckie, S., "Kosovo's Next Challenge: Fixing the Housing Mess", Human Rights Tribune, December 1999, Vol. 6, No. 4.

<sup>14</sup> Many of the privatized apartments were subsequently sold to third parties, an issue which the restitution process had to take into account, see section 3.3 of UNMIK Regulation 2000/60.

Additionally, in 1991 legislation designed to limit real-estate transactions was enacted, namely the Law on Changes and Supplements on the Limitations of Real-Estate Transactions.<sup>15</sup> Its provisions required every contract for the purchase, lease and sale of real estate in Kosovo to be approved by the Directorate of Property Rights Affairs of the Ministry of Finance of the Republic of Serbia. The Ministry could refuse to approve a sale if it considered that it would have had an effect on “*the national structure of the population*” or on the “*emigration of members of a particular...nationality*”. This law had the object and effect of restricting the sale of properties from Kosovo Serbs to Kosovo Albanians as a means of ensuring that the Serb population did not decline.<sup>16</sup> Some 98% of transactions presented to the Ministry of Finance were reported to have been rejected on this ground.<sup>17</sup> Many citizens sought to circumvent these legislative measures and concluded informal unregistered property transactions which were not recorded in the cadastre or property records. This practice which continued up to 1999 gradually rendered the cadastre and property registration system unreliable.<sup>18</sup>

## **2. The NATO Intervention**

As ethnic conflict spread throughout Kosovo in 1999 an estimated 800,000 Kosovo Albanians fled their homes.<sup>19</sup> After the Rambouillet peace negotiations failed,<sup>20</sup> NATO began its bombing campaign against the Federal Republic of Yugoslavia on 24 March 1999. The bombing campaign ended on 10 June 1999 with the signing of the Military Technical Agreement,<sup>21</sup> and the adoption of UN Security Council Resolution 1244 (“SC1244”).<sup>22</sup> The preamble to the Resolution reaffirmed the commitment of the international community to the sovereignty and integrity of FRY, as well as calls for substantive autonomy and meaningful self-administration of Kosovo. SC1244 authorized the deployment in Kosovo of an international civil presence, namely the United Nations

---

<sup>15</sup> Official Gazette of the Socialist Republic of Serbia 22/91, 18 April 1991. Note also the Law on Conditions, Ways and Procedures of Granting Farming Land to Citizens of the Autonomous Province of Kosovo and Metohija; Official Gazette of the Socialist Republic of Serbia 43/91.

<sup>16</sup> Leckie, S., *op. cit.*, note 13.

<sup>17</sup> Leckie, S., *op. cit.*, note 13.

<sup>18</sup> See the report of the OSCE Mission in Kosovo, *op. cit.*, note 8.

<sup>19</sup> See the Report of the Secretary-General on UNMIK, UN SCOR, 54<sup>th</sup> Session, UN Doc. S/1999/779 (1999); the report of the OSCE Mission in Kosovo, *op. cit.*, note 8. They were displaced in refugee camps in neighboring countries, mainly Albania and the former Yugoslav Republic of Macedonia, (hereinafter “FYROM”) while some were airlifted to members states of the EU, US and Canada.

<sup>20</sup> Interim Agreement for Peace and Self-Government in Kosovo, February 23, 1999. The Rambouillet Agreement set out a framework for peaceful intervention in Kosovo to ensure the protection of human rights.

<sup>21</sup> Under the Military Technical Agreement Yugoslav and Serb forces were to withdraw from Kosovo.

<sup>22</sup> Security Council Resolution 1244 (1999) Kosovo, UN Doc. S/RES/1244 (1999), adopted by the Security Council at its 4011<sup>th</sup> meeting on 10 June 1999, hereinafter “SC 1244”. For further background details, see the Independent International Commission’s report, *op. cit.*, note 8 at p. 35 and 54 and the report of the OSCE Mission in Kosovo, *op. cit.*, note 8 at p. 29-32.

Interim Administration Mission in Kosovo (“UNMIK”) and an international security presence, the Kosovo Force (“KFOR”).<sup>23</sup>

The mandate conferred on UNMIK was unprecedented in terms of the nature and number of tasks and their complexity when compared with the mandate of other earlier UN peace operations.<sup>24</sup> It was conferred with legislative and executive powers and mandated to establish an international civil presence that would provide an interim administration in Kosovo until a long term political solution could be reached.<sup>25</sup> KFOR, led by the North Atlantic Treaty Organization (“NATO”) was responsible for ensuring peace and a secure environment in Kosovo and for supporting the work of the international civil presence.<sup>26</sup> SC 1244 provided for the appointment of a Special Representative of the Secretary-General of the UN (the “SRSG”) to direct and control the implementation of SC 1244.<sup>27</sup> All legislative and executive authority was vested in UNMIK and was to be exercised by the SRSG.<sup>28</sup>

SC 1244 made numerous references to the right of refugees and displaced persons to return to their homes. The Resolution determined “*to resolve the grave humanitarian situation in Kosovo*”<sup>29</sup> and to provide for “*the right of all refugees and displaced persons to return to their homes in safety*.”<sup>30</sup> One of the main responsibilities of the international civil presence was to “[a]ssur[e] the safe and unimpeded return of all refugees and displaced persons to their homes” and it encouraged “*all member states and international organizations to contribute to ... the safe return of refugees and displaced persons*”.<sup>31</sup> KFOR was to support UNMIK in the accomplishment of this task by establishing “*a secure environment in which refugees and displaced persons c[ould] return home in safety*”.<sup>32</sup>

### **3. UNMIK’s Response to Kosovo’s Housing and Property Crises**

The post-conflict environment presented numerous housing and property rights challenges ranging from population displacement to widespread damage and illegal

---

<sup>23</sup> See para. 5 of SC 1244. KFOR was a specifically constituted force which was composed of NATO, (including its members states and headquarters, its subsidiary bodies, its military and national elements) and non-NATO contributing troop contributing nations.

<sup>24</sup> Matheson, M., ‘United Nations Governance of Post-conflict Societies’, 95 American Journal of International Law, 76, 2001.

<sup>25</sup> The responsibilities of the international civil presence were set down in para. 11(a)-(k) of SC 1244.

<sup>26</sup> KFOR deployed between 40,000-50,000 troops in Kosovo.

<sup>27</sup> See para 6.

<sup>28</sup> See the Report of the Secretary-General on UNMIK, UN SCOR, 54<sup>th</sup> Session, UN Doc. S/1999/779 (1999) at para. 35 and 39.

<sup>29</sup> See Preamble of SC 1244.

<sup>30</sup> See page one of SC 1244, reaffirmation clause.

<sup>31</sup> Para. 11(k) and 13. Annex 2 to SC 1244, para. 7 gave the Office of the United Nations High Commissioner for Refugees (UNHCR) the mandate to supervise the safe and free return of all refugees and displaced persons to their homes and gave unimpeded access to Kosovo by humanitarian organizations.

<sup>32</sup> Para. 9(c).

occupation of properties. The situation was further compounded by the pre-1999 period of ethnic discrimination which had also resulted in displacement and property disputes.

The majority of the Kosovo Albanians who had fled in March 1999 returned after NATO's deployment in Kosovo in June,<sup>33</sup> but at the same time, violence against minorities prevailed and precipitated a mass exodus of Kosovo Serbs, Roma and other non-Albanians<sup>34</sup> who fled in fear of reprisals by the Kosovo Albanian population. There are varying estimates on the numbers that fled, at least tens of thousands.<sup>35</sup> Much of the housing stock had been destroyed during the conflict. Surveys estimated that almost half of the available housing units were destroyed or rendered uninhabitable.<sup>36</sup> As many Albanian returnees found that their homes had been damaged or destroyed during the conflict, they moved into properties that had been abandoned by Kosovo Serbs and other minorities thus bringing about a rapid increase in irregular and unauthorized "secondary occupation" of properties.<sup>37</sup>

This situation was exacerbated by legal uncertainty surrounding property records. The Cadastre and property rights register were incomplete and inaccurate due to the fact that the pre-1999 system regulating it did not adequately provide for the registration of all property transfers. Further, the conclusion of unregistered and unofficial transfers which had taken place between 1991 and 1999 also rendered records incomplete and unreliable.<sup>38</sup> This situation was further exacerbated by the destruction of property records during the conflict, and their removal by the FRY authorities when they retreated in 1999.<sup>39</sup> The Yugoslav Army removed all of its archives while the police removed approximately 50% of its records, and socially owned enterprises were stripped of a significant amount of their documentation.<sup>40</sup> Further, the majority of the Cadastre records were removed to Serbia proper, and a significant number of municipalities were missing

---

<sup>33</sup> See the report of the Independent International Commission, *op. cit.*, note 8, at page 43.

<sup>34</sup> Including Ashkali, Egyptians and Slavic Muslims.

<sup>35</sup> The Framework for Return (2001) of the Joint Committee on the Return of Kosovo Serbs reported that some 215,104 persons were displaced in Serbia and Montenegro as at January 2001 but varying figures have been reported, see further the report of the OSCE Mission in Kosovo's report, *op. cit.*, note 8; The Internal Displacement Monitoring Centre's Report on Serbia and Montenegro; the Report of the Independent International Commission on Kosovo, *op. cit.*, note 8 at p. 43; and the report of Human Rights Watch entitled "Abuses Against Serbs in the New Kosovo", August 1999, Volume 11, No. 10 (D) at pages 2 and 67.

<sup>36</sup> Das, H., "Regularizing Housing and Property Rights in Kosovo", at page 2, [www.unhabitat.org](http://www.unhabitat.org); Some towns such as Djakovica, Orahovac and Pec had more than 75% of their pre-war buildings in ruins, see further, Leckie, Scott, *op. cit.*, note 13; the report of the OSCE Mission in Kosovo, *op. cit.*, note 8 at Chapter 12; Von Carlowitz, L., "Crossing the boundary from the international to the domestic legal realm: UNMIK lawmaking and property rights in Kosovo" in Global Governance, Vol. 10, No. 3, 2004.

<sup>37</sup> Leckie, S., *op. cit.* note 13; Das, H., *op. cit.*, note 36; Beardsley, "Who Owns What? UN tackles Kosovo housing tangle" (10 January 2002) Christina Science Monitor, [www.csmonitor.com](http://www.csmonitor.com)

<sup>38</sup> Considered in detail in 1 of this Report.

<sup>39</sup> See further the report of the report of the OSCE Mission in Kosovo, *op. cit.* note 13; Leckie, S., *op. cit.*, note 13; the report of the OSCE's Department of Human Rights and Rule of Law on Property Rights in Kosovo 2002-2003, in Chapter 1.

<sup>40</sup> *Ibid.*



property records.<sup>41</sup> All of these factors made an accurate determination of property title extremely difficult.

Due to the extensive destruction of housing during the conflict, and the absence of an alternative independent mechanism to resolve property disputes, illegal occupation and dispossession prevailed.<sup>42</sup> In this environment the property sector became a source of continuing tension as illegal occupation continued unabated which in turn led to a highly charged political environment.<sup>43</sup>

In recognition of the crises which UNMIK faced in the housing and property sector, the SRSG in late 1999 enlisted the services of the United Nations Human Settlement Programme (UN-HABITAT) to assist in the coordination of the housing and property restitution process. UN-Habitat facilitated an Interagency Housing and Property Task Force to conduct research and provide guidance and technical assistance on the way to tackle certain housing and property issues. Three primary areas warranting urgent intervention were identified by UN-Habitat and the following actions were recommended to be taken:

- (i) the establishment of an adjudication mechanism for housing and property rights;
- (ii) the creation of centralized Cadastre and property records;
- (iii) the enhancement of municipal government and administration.

UN-Habitat presented an action plan for the promotion and protection of housing and property rights in Kosovo. The plan put forward comprehensive recommendations for legislative reform and the creation of a Housing and Property Directorate.<sup>44</sup> It proposed the latter be entrusted with responsibility for the coordination and centralization of UNMIK's efforts in the field of housing and property rights and it enumerated a number of tasks that were to be assigned to it, including the resolution of residential property disputes and the administration and allocation of abandoned properties.<sup>45</sup>

In November 1999 the SRSG adopted these recommendations through the promulgation of UNMIK Regulation 1999/23 establishing an ad hoc independent body to resolve residential property disputes and deal with some other housing issues. It was composed of two distinct organs, a quasi judicial organ, the Housing and Property Claims Commission (the "HPCC") and an administrative body (the Housing and Property Directorate), both of which were mandated to achieve an "*efficient and effective resolution of claims concerning residential property.*"

---

<sup>41</sup> *Ibid.*

<sup>42</sup> See the report of the Independent International Commission, *op. cit.*, note 8, at page 40.

<sup>43</sup> See also Von Carlowitz, L., *op. cit.* note 36, at pages 605-606; Das, H., *op. cit.*, note 36 at pages 433-435.

<sup>44</sup> The plan was entitled 'Housing and Property in Kosovo: Rights, Laws and Justice – proposals for a comprehensive plan of action for the promotion and protection of housing and property rights in Kosovo', and was prepared by Mr. Scott Leckie, S (UNCHS (Habitat)) 30 August 1999, available at [www.unhabitat.org](http://www.unhabitat.org).

<sup>45</sup> *Ibid.*

## CHAPTER 2

### THE HOUSING AND PROPERTY CLAIMS COMMISSION

#### 1. Establishment

Section 2 of UNMIK Regulation 1999/23 created the HPCC which was the independent quasi judicial component of the property restitution mechanism and was conferred with exclusive jurisdiction to “*settle private non-commercial residential property disputes until the SRSG determine[d] that local courts [were] able to carry out the mandate entrusted to the Commission.*”<sup>46</sup>

The HPCC was established as a self-contained regime and operated outside the domestic legal system, having its own rules of procedure and evidence for the resolution of claims which were adopted upon a recommendation from the HPCC, contained in UNMIK Regulation 2000/60.<sup>47</sup> Further the Regulation authorized the HPD and HPCC to adopt further rules of procedure for the implementation of its mandate provided they were consistent with the Regulation.

The HPCC was supported by a Housing and Property Directorate (the “HPD”) which was responsible for the collection and processing of claims, the implementation of HPCC decisions and the overall management of the mechanism.<sup>48</sup> Further, it was assisted in the performance of its judicial functions by a Registry which provided it with administrative, technical and legal support.<sup>49</sup>

Decisions of the HPCC on claims were binding and enforceable and were not subject to review by any other judicial or administrative authority in Kosovo<sup>50</sup> save that UNMIK Regulation 2000/60 contained a review procedure for decisions by permitting a party to a claim, or any interested party to file a request for reconsideration of a decision.<sup>51</sup>

---

<sup>46</sup> See section 2.5 of UNMIK Regulation 1999/23. Due to the incapacity of the courts, the SRSG never determined that the local courts were competent to carry out the mandate entrusted to the HPCC. As to the capacity of the courts generally in Kosovo, see further the OSCE Mission in Kosovo’s periodic reports on the Criminal Justice System available at [www.oscmissioninkosovo.org](http://www.oscmissioninkosovo.org) and see the OSCE’s Review of the Criminal Justice System entitled “The Administration of Justice in the Municipal Courts”, March 2004 at page 9; the Final Report prepared by ECO and submitted to the European Agency for Reconstruction (EAR) dated 13 December 2004 at pages 13 and 25; and the quarterly reports of the Secretary-General on the United Nations Interim Administration in Kosovo to the Security Council.

<sup>47</sup> UNMIK Regulation 2000/60 was promulgated in October 2000.

<sup>48</sup> See section 1 of UNMIK Regulation 1999/23.

<sup>49</sup> See section 17.13 of UNMIK Regulation 2000/60.

<sup>50</sup> See section 2.7 of UNMIK Regulation 1999/23.

<sup>51</sup> See section 14 of UNMIK Regulation 2000/60.

## 2. Jurisdiction

The HPCC did not have exclusive jurisdiction to decide all property related claims, its adjudicative jurisdiction was specifically limited to deciding three categories of residential property claims referred to it by the HPD, as set down in section 1.2(a)-(c) of UNMIK Regulation 1999/23. These claims were further limited in respect of the time period during which a claim must have arisen (*ratione temporis*); the claimant's capacity to bring a claim (*ratione personae*); the type of losses for which restitution of property right could be ordered (*ratione materiae*), and the requirement that the property be located in Kosovo (*ratione loci*).

Section 1.2 of UNMIK Regulation 1999/23 set down the three categories of residential property claims which the HPD could receive and register, as an exception to the jurisdiction of the courts. The categories of claims corresponded with the property violations that had occurred in Kosovo between 1989 and 1999. Section 2 of UNMIK Regulation 2000/60 contained substantive provisions relevant to the requirements to be met for a successful claim and the remedies available to claimants.

The claims were termed in accordance with the provisions of the Regulation 1999/23 as category A, B and C claims.

### *Category A claims*

Section 1.2(a) of UNMIK Regulation 1999/23 defined the first category of residential property claims, ("category A claims") which could be filed with the HPD as follows:

*"Claims by natural persons whose ownership, possession or occupancy rights to residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent"*

This category of claim provided a remedy for persons who lost residential property rights between 23 March 1989 and 24 March 1999 as a result of discriminatory measures invoked by the authorities during that period<sup>52</sup> whereby many Kosovo Albanians were dismissed from their positions of employment and lost occupancy rights over their properties which were linked to their actual employment.<sup>53</sup>

A claimant who filed a category A claim had to prove compliance with the requirements of section 1.2(a) of UNMIK Regulation 1999/23 and section 2.2 of UNMIK/Regulation 2000/60 and prove the following:

- a) that he or she had a property right, namely and occupancy right or an ownership right to residential property;
- b) that the right was revoked or lost;

---

<sup>52</sup> See also section 2.2 of UNMIK Regulation 2000/60.

<sup>53</sup> The discriminatory loss of residential property is considered in Chapter 1 of this Report.

- c) that the loss or revocation of the property occurred between 23 March 1989 and 24 March 1999;<sup>54</sup> and
- d) that the loss or revocation was as a result of discrimination.

Successful category A claimants were entitled to restitution, which could take the form of “*restoration of the property rights (hereafter “restitution in kind”) or compensation.*”<sup>55</sup> Further clarification on the right to restitution was provided in section 3.3 of UNMIK Regulation 2000/60 which prescribed that where a claimant was found by the HPCC to be entitled to restitution, he or she would be awarded restitution in kind, unless the ownership of the property has been acquired by a natural person through a valid voluntary transaction for value before the date this regulation entered into force. Further, section 4 of UNMIK Regulation 2000/60 provided for an exception to section 3.3, in relation to socially owned apartments which, subsequent to the cancellation of the occupancy right were purchased from the allocation right holder by the current owner under the Law on Housing, by permitting the claimant with the occupancy right the right to purchase the ownership right upon payment to the HPD of a sum determined by it.<sup>56</sup>

### ***Category B claims***

Section 1.2(b) of UNMIK Regulation 1999/23 defined the second category of residential property claims (“category B claims”), which could be filed with the HPD as follows:

*“Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989”.*

Category B claims sought to establish certainty of title for persons who had entered into informal transactions of residential property after 23 March 1989 in order to circumvent the provisions of the Law on Changes and Supplements on the Limitation of Real Estate Transactions.<sup>57</sup>

A claimant who filed a category B claim had to prove compliance with the requirements of section 1.2(b) of UNMIK Regulation 1999/23 and section 2.3 of UNMIK Regulation 2000/60 and prove the following:

- a) that he or she had entered into a transaction of residential property between 23 March 1989 and 13 October 1999;<sup>58</sup>

<sup>54</sup> Note that 23 March 1989 was the date on which Kosovo lost autonomy and 24 March 1999 was the date on which NATO began its bombing campaign against the Federal Republic of Yugoslavia, considered in Chapter 1 of this Report.

<sup>55</sup> See section 2.2 of UNMIK Regulation 2000/60.

<sup>56</sup> In such cases compensation was paid to the current owner for his or her loss of ownership right over the property. The provisions of section 4 of UNMIK Regulation are considered in Chapter 7 of this Report.

<sup>57</sup> Official Gazette of the Socialist Republic of Serbia 22/91, 18 April 1991. The provisions of this law and its impact on property transactions are considered in Chapter 1 of this Report.

<sup>58</sup> Note that 13 October 1999 was the date on which UNMIK promulgated Regulation 1999/10 which repealed discriminatory laws.

- b) that the transaction was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions or other discriminatory law;
- c) that the transaction would otherwise have been lawful; and
- d) that the transaction was based on the free will of the parties.

Any person who acquired ownership of a property through an informal transaction was entitled to *“an order from the Directorate or Commission for the registration of his/her ownership right in the appropriate public record.”*<sup>59</sup> The registration of title in the public records was recognized by the international community when it intervened in 1999 as one of the key preconditions to regularizing the property sector.

### ***Category C claims***

Section 1.2(c) of UNMIK Regulation 1999/23 defined the third category of residential property claims (“category C claims”), which could be filed with the HPD as follows:

*“Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.”*

This category of claim aimed at addressing the forced population displacement of those who had property rights to residential property on 24 March 1999, and who had fled their homes due to circumstances surrounding the NATO air campaign and could not return given the manifest impossibility of returning to illegally occupied property.

A claimant who filed a category C claim had to prove compliance with the requirements of section 1.2(c) of UNMIK Regulation 1999/23 and section 2.6 of UNMIK Regulation 2000/60 and prove the following:

- a) that he or she had a property right (i.e. an ownership right, an occupancy right or a lawful possession right) to residential property prior to 24 March 1999; and
- b) loss of possession of the property in circumstances surrounding the NATO air-campaign; and
- c) that he or she did not voluntarily disposed of their property right.

Section 2.6 of UNMIK Regulation 2000/60 prescribed that such persons who lost possession of property on 24 March 1999 and had not voluntarily disposed of it were entitled to *“an Order ... for repossession of the property.”* This provision sought to ensure the fulfillment of section 2.5 of the Regulation, namely to ensure that *“any refugee or displaced person with a right to property ha[d] a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation”*.

Section 2.6 protected the right of all refugees and IDPs to return to their homes regardless of the nature of their property rights. It protected those with ownership rights and

---

<sup>59</sup> See section 2.4 of UNMIK Regulation 2000/60.

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 properties were afforded the right to return, and ongoing disputes relating to title or underlying legal rights could thereafter be resolved by the domestic institutions.

### ***Exclusive jurisdiction of the HPCC***

In line with its exclusive jurisdiction to resolve claims prescribed in section 1.2 of the Regulation, the HPCC could refer separate parts of such claims to the local courts or administrative organs, if they raised issues which did not relate to the categories of claims under its exclusive jurisdiction.<sup>60</sup> In order to assist the courts in their interpretation of the provisions of UNMIK Regulation 2000/60 in relation to the competence and exclusive jurisdiction of the HPCC, the SRSG on 12 April 2001, issued a clarification on the provisions of the Regulation which served primarily to assist the local courts in determining whether a property claim fell within its competence or that of the HPCC. The clarification expressly provided that where a claim involved legal issues, some of which were under the jurisdiction of the HPD and others which fell under the jurisdiction of the courts, the legal issues under the competence of the HPD were to be dealt with first.<sup>61</sup> Following the HPCC's decision on a claim, the local courts retained jurisdiction to adjudicate any legal issue not decided by the HPCC.<sup>62</sup>

### **3. Composition and Membership**

Given the extreme ethnic divides which existed in Kosovo and in order to foster the support and confidence of claimants and the public at large in the process, section 2.2 of UNMIK Regulation 1999/23 prescribed that the HPCC was to be composed of a panel of two international and one national Commissioners, who were to be appointed by the SRSG. In 2001 the SRSG appointed the three members the HPCC. The international members were Mr. Alan Dodson from South Africa and Mr. Veijo Heiskanen from Finland. The local member was Mr. Aqif Tuhina who had served as a Judge in the Supreme Court of Kosovo prior to the loss of autonomy in 1989.<sup>63</sup> All members were experts in law and other disciplines<sup>64</sup> and were distinguished lawyers bringing to the HPCC a wide variety of experience in different backgrounds, including the judiciary, the academic sphere, private legal practice, international claims and international human rights law.<sup>65</sup> Their appointments under UNMIK Regulation 1999/23 were for a one year

---

<sup>60</sup> See section 22.1 of UNMIK Regulation 2000/60.

<sup>61</sup> See para. 13 of the SRSG's Clarification of UNMIK Regulation 2000/60 available at [www.unmikonline.org](http://www.unmikonline.org)

<sup>62</sup> See 22.6 of UNMIK Regulation 2000/60.

<sup>63</sup> The profile of each member is attached at Annex 1.

<sup>64</sup> This was in accordance with section 2.2 of UNMIK Regulation 1999/23 which required that members be competent to hold judicial office.

<sup>65</sup> Refer to the profiles of the members of the HPCC in Annex 1.

period<sup>66</sup> and all three members were reappointed on an annual basis and remained on the HPCC until the completion of its mandate. The SRSB designated Mr. Dodson to serve as the chairperson of the HPCC. It was open to the SRSB to establish additional panels to sit concurrently, but no additional panels were appointed due to the finite number of cases and workload as well as funding constraints.<sup>67</sup>

The members were not based in Pristina on a full-time basis but in most instances met in Pristina for commission sessions.

The majority presence of the international members was considered important from a number of perspectives. Its purpose was to guarantee fair, objective and impartial decision making in line with international standards and minimized the concern of local partiality. Such guarantees were designed to increase confidence of Kosovo Serbs and other minorities in the process. The inclusion of a national commissioner assisted in ensuring that decision making was consistent with the applicable domestic law.

The members served only in their personal capacity and were expressly precluded from taking part in any proceedings on a claim if:

- a) they had a personal interest, or if they had been consulted by or were associated with a party to the claim; or
- b) they had been involved in any legal proceedings on the claim other than the proceedings before the HPD or HPCC; or
- c) there were any other circumstances which would have affected their impartiality.<sup>68</sup>

Before taking office, the members were under a statutory obligation to swear and sign the following declaration:

*"I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honorably, faithfully, impartially and conscientiously."*<sup>69</sup>

A member of the HPCC could be removed from office by the SRSB on the recommendation of a majority of the members for failure to meet the qualifications for office, or for persistent and unjustified refusal to perform their duties of office.<sup>70</sup> Members of the HPCC were immune from criminal or civil proceedings for any acts carried out within the scope of their official duties.<sup>71</sup>

---

<sup>66</sup> See section 17.3 of UNMIK Regulation 2000/60.

<sup>67</sup> See section 2.2 of UNMIK Regulation 1999/23.

<sup>68</sup> See section 17.12 of UNMIK Regulation 2000/60.

<sup>69</sup> See section 2.3 of UNMIK Regulation 1999/23. This Declaration was required to be recorded in the HPD's archives.

<sup>70</sup> See section 17.4 of UNMIK Regulation 2000/60.

<sup>71</sup> See section 17.6 of UNMIK Regulation 2000/60. Note also that where a member of the HPCC intended to resign, he or she was required to provide at least one month's written notice to the Registrar and the chairperson of the HPCC, and to continue to perform all his or her functions until the end of the notice

#### 4. Sessions of the HPCC

The seat of the HPCC was in Pristina.<sup>72</sup> The HPCC was permitted to carry out its adjudicative functions through convening sessions in Pristina or holding sessions elsewhere or through electronic means where appropriate.

Sessions were held ordinarily six times per year in a meeting room which was made available for live sessions at the HPD's offices.<sup>73</sup> On eight occasions proceedings were conducted through telephone conferences and electronic means.<sup>74</sup>

Sessions lasted for approximately 3-5 days. At the commencement of each live-session the HPCC met with the Executive Director of the HPD, the Registrar Adjudication and other staff from the Office of the Registry and legal officers working on the processing and implementation of claims. At this meeting the Executive Director reported to the HPCC on the status and overall progress on the processing and implementation of claims, the various challenges facing the institution and the specific actions taken to meet these challenges. The HPCC members made use of this forum to provide for the exchange of information between itself and the HPD on issues relevant to the investigation and processing of claims and the preparation of claim processing reports. Specific reference was made to legal issues which had arisen in relation to claims, relating to inadequate verification or notification of claims or incomplete claims processing reports.

After the opening meeting the HPCC began its deliberations and decision making on claims. The HPCC could issue a decision granting or dismissing a claim. It could also refer a claim back to the HPD for further investigation where it deemed that such further investigation was necessary to allow it to reach a determination on the claim. In order to correct administrative errors, omissions and procedural defects after a claim had been decided the HPCC issued formal Resolutions which *inter alia* overturned its earlier decision and referred the claim back to the HPD for investigation and processing in accordance with the correct procedure.<sup>75</sup>

The HPCC conducted its work in private in the presence of Registrar Adjudication and legal officers and all its deliberations and records were confidential, except for its minutes issued after each session once they were approved and signed by the

---

period, see section 17.5(a)-(b) of UNMIK Regulation 2000/60. He or she was also required to continue to serve after the end of the notice period for the limited purpose of finalizing any claim or group of claims which were still pending, see section 17.5(c) of UNMIK Regulation 2000/60.

<sup>72</sup> See section 17.8 of UNMIK Regulation 2000/60.

<sup>73</sup> The HPCC's first nine sessions were held at the HPD's Executive Office at No. 2 Goleska Street, Pristina. The 10<sup>th</sup> Session was held in UNMIK HQ. Thereafter all sessions, with the exception of those conducted electronically, were held at the HPD's files services, registry and case processing headquarters at No. 51 Vllaznim Bashkimi Street, Pristina.

<sup>74</sup> Where a member of the HPCC was unable to participate in a session, he or she was required to give written notice to the Registrar and the Chairperson of this fact at least two weeks before the session, see section 17.11 of UNMIK Regulation 2000/60. No such notice was ever tendered, as members were always available to participate in sessions.

<sup>75</sup> Considered further in Chapter 6 of this Report.



Chairperson. The Chairperson of the HPCC directed its work and presided at its sessions.<sup>76</sup> He directed the order in which claims were considered and the dates of its sessions. The official languages of the HPCC were Albanian, English and Serbian but its working language was English with translations being provided as appropriate and the Chairperson could permit any member of person appearing before it to speak in any other language.<sup>77</sup>

At the end of each session the HPCC held a closing session at which it discussed with the Office of the Registrar and the Executive Director issues which had arisen in relation to the processing of claims, and the reasons for the referral back of some claims for further processing and investigation. In order to ensure consistency and accuracy in decision-making, it issued guiding principles in the form of instructions which were circulated throughout the organization by the Office of the Registry together with the minutes of the HPCC. The instructions guided the work of the HPD and ensured that similar errors or omissions did not reoccur. A record of all HPCC minutes and instructions was forwarded by the Registry to the HPD's executive office for filing and safe keeping.

Upon the increase in the number of claims submitted, the HPCC decided in the fall of 2002 to put in place arrangements for the local member to carry out certain claims review functions in coordination with the Office of the Registry between sessions.

Procedures applicable to the decision making process and proceedings before the HPCC are considered in detail in Chapter 7 of this Report.

---

<sup>76</sup> See section 17.9 of UNMIK Regulation 2000/60. Section 17.2 of the Regulation prescribed that if the Chairperson of the HPCC resigned or was removed or was not re-appointed, the longest-serving Panel Chairperson was to be the Acting Chairperson of the Commission pending the designation of the Chairperson by the Special Representative of the Secretary-General.

<sup>77</sup> See section 17.15 of UNMIK Regulation 2000/60 and note that the Chairperson could permit any member or person appearing before it to speak in any other language.

## CHAPTER 3

### THE PROVISION OF ADMINISTRATIVE AND LEGAL SUPPORT SERVICES TO THE HPCC

#### 1. Administrative Support and Management

The HPD which constituted the HPCC's administrative branch was established under section 1 of UNMIK Regulation 1999/23 and was mandated primarily to provide secretariat services to the HPCC through the collection, registration and processing of residential property claims. It did not have an independent decision-making authority. Pursuant to sections 1.2 of UNMIK Regulation 1999/23 and 10.4 of UNMIK Regulation 2000/60 it was under a statutory obligation to refer all claims that could not be mediated<sup>78</sup> to the HPCC for adjudication, save that it could issue decisions in uncontested category B cases to register informal transactions.<sup>79</sup> Section 1.2 of the Regulation prescribed as follows:

*"The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution."*

The processing of claims involved investigating claims, notifying parties, verifying documents and drafting legal submissions and recommendations for the HPCC. The HPD was also conferred with responsibility for implementing HPCC decisions. UNMIK Regulation 2000/60 provided the legal basis for the execution of decisions through the eviction of illegal occupants, where necessary, with the support of the law enforcement authorities.<sup>80</sup>

The HPD was also mandated to provide overall direction on property rights in Kosovo<sup>81</sup> and oversee the administration of abandoned property.<sup>82</sup>

---

<sup>78</sup> The mediation role conferred on the HPD under section 1.2 of UNMIK Regulation 1999/23 was not utilized as parties opted to have their claims determined before the HPCC.

<sup>79</sup> See section 11.1 of UNMIK Regulation 2000/60, see further Chapter 6 of this Report.

<sup>80</sup> See section 13 of UNMIK Regulation 2000/60.

<sup>81</sup> Section 1.1 of UNMIK Regulation 1999/23 enumerated some of the functions which fell under this aspect of the HPD's mandate as follows:-

- a) to conduct an inventory of abandoned private, state and socially owned housing;
- b) to supervise the utilization or rental of such abandoned property on a temporary basis for humanitarian purposes; rental monies of abandoned private and socially owned property shall be recorded in a separate account in trust for the rightful owner, subject to deduction of relevant expenses;
- c) to provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on specific issues related to property rights; and
- d) to conduct research leading to recommended policies and legislation concerning property rights.

<sup>82</sup> See section 1.1 of UNMIK Regulation 1999/23 and section 12 of UNMIK Regulation 2000/60.

By virtue of it being the component of the property restitution mechanism which had a permanent base and personnel in Kosovo the HPD's responsibilities extended well beyond these functions. It was entrusted with primary responsibility for the administration of the entire process. Given the technical and administrative complexities involved in the processing of claims the HPD had to recruit personnel, develop a computer support infrastructure, procure office space, equipment and vehicles, pursue an active outreach policy, and secure funding for the process. It was also the link between the process and UNMIK and reported on a weekly basis to UNMIK Management, through Pillar II. The procedures which governed the work of the HPD were set down in UNMIK Regulation 2000/60.<sup>83</sup>

The HPD's working language was English, but public documents were issued in Albanian and Serbian.

### *Institutional Structure of the HPD*

The HPD's headquarters was initially located at no. 51 Vllaznim Bashkimi Street in Pristina. Subsequently the Executive Office moved to no. 2 Goleska Street, Pristina leaving file services, the registry and case processing in the other building.

UNMIK Regulation 2000/60 authorized the establishment of offices to facilitate the registration of claims throughout Kosovo and at such other locations as it deemed fit.<sup>84</sup> The HPD established an extensive network of regional and satellite offices throughout Kosovo.<sup>85</sup> From these offices, mobile teams were deployed into areas populated by members of the minority community who did not enjoy freedom of movement due to perceived or real security concerns.

Further, in recognition of the fact that the majority of claimants were dispersed throughout Serbia proper, the former Yugoslav Republic of Macedonia (fYROM) and Montenegro, representative offices were established from 2001 onwards in Skopje (fYROM) and Belgrade (Serbia proper) with a branch in Podgorica (Montenegro) in order to facilitate claim intake.<sup>86</sup>

---

<sup>83</sup> UNMIK Regulation 2000/60 was promulgated on 31 October 2000.

<sup>84</sup> See section 7.1 of UNMIK Regulation 2000/60.

<sup>85</sup> Regional offices were opened in Gnjilane, Mitrovica, Pec and Pristina in 2001 and in Prizren in 2003. Further, in the largest minority areas (so-called enclaves) field offices were opened which served initially as centers for claim intake and thereafter facilitated the service of HPCC decisions on parties and the provision of information on claims status and HPD procedures generally. A field office was opened in Gracanica.

<sup>86</sup> On 1 November 2001 following lengthy and protracted negotiations with FRY-government officials, a Memorandum of Understanding was signed between the Government of the Republic of Yugoslavia and UN-Habitat which permitted the HPD to operate within Serbia. Note also the HPD's Annual Report for 2004 which provides a detailed account of its institutional structure, available at [www.hpdkosovo.org](http://www.hpdkosovo.org). A full list of the addresses and contact details for HPD Headquarters' and all its Regional Offices is available at [www.hpdkosovo.org](http://www.hpdkosovo.org).

Since its inception in 1999 the HPD has been headed by an Executive Director who was appointed by the SRSG after consultation with the Executive Director of UN-Habitat.<sup>87</sup> Initially due to the limited funding, the Chief Technical Advisor of UN-Habitat was the acting Executive Director of the HPD but this changed in August 2001 with the appointment of the first permanent Executive Director.

The Executive Director designed the organizational structure of the HPD and was authorized to appoint its national and international staff.<sup>88</sup> He or she was responsible for the overall management of the HPD and for the formulation of policy, securing funding for the institution and reporting to UNMIK through its civil administration component (Pillar II, since Spring 2006, the Department of Civil Administration). He or she also reported to the PISG and the donor community and other key stakeholders in the property rights field. Since its inception the HPD had a total of four persons who acted in the position of Executive Director.<sup>89</sup> The institution grew over time to include 250 professional and other staff, including lawyers, legal assistants, translators, accountants, computer and IT experts and administrative support staff.

In addition to the Office of the Executive Director, the main organizational units of the HPD were the Central Case Processing Unit (CCPU), the Verification Unit, the Department of Operations, the Registry, IT Unit, File Services Unit and the Outreach Unit.<sup>90</sup>

In order to manage its portfolio of functions effectively the HPD had to ensure that its administrative set-up, structure and deployment of personnel were adjusted over time in order to meet the evolving needs and priorities of the institution. At the period of its inception the main focus was on claim collection and processing whereas this shifted

---

<sup>87</sup> See section 3 of UNMIK Regulation 1999/23.

<sup>88</sup> See section 3 of UNMIK Regulation 1999/23.

<sup>89</sup> See Annex 4.

<sup>90</sup> The Executive Office was tasked with performing particular services relating to recruitment, procurement, accounting, logistics including IT support, and public relations. The Department of Operations coordinated all operational activities in the field through its regional offices. CCPU was responsible for reviewing and processing claims and drafting legal submission on claims for their referral to the HPCC. File Services kept and maintained up to date records of all files and was responsible for updating the database in respect of each claim with regard to incoming documents and the status of the claim processing. The Verification Unit was responsible for conducting searches and verification of documents which was carried out by a specialized team of verification officers who were tasked in each case by lawyers in the central case processing unit involved in investigating and processing the claims. The verification team was centralized in the HPD's headquarters in the first two years of operations. In the fall of 2002 they were decentralized and deployed in the regional offices except that a core verification team for category A and B claims remained in HPD HQ in Pristina. The Outreach Unit was responsible for updating parties on the status of their claims as well as notifying claimants of the HPCC decision, informing them about their options for implementation of the decision and making arrangements with them for the collection of their decision. The unit was also tasked to deal with general queries regarding the status of claims and from 2005 onwards this information was also available on the HPD's website. The Enforcement Unit which was responsible for the execution of eviction warrants where necessary following requests from successful claimants for repossession or to place their property under HPD administration.

over time to claim implementation, through the execution of eviction orders and managing property placed under its temporary administration.

## **2. Legal Support**

A central component of the HPCC was the Registry which provided the necessary administrative, technical and legal support to the HPCC<sup>91</sup> and represented the link between the HPD and HPCC. The Registry was staffed and administered by the HPD, in consultation with the HPCC.<sup>92</sup> It was composed of a number of registrars and additional legal support and administrative staff. It had a Registrar for adjudication who responsible for assisting the HPCC in the period leading up to decision making, including categorizing and referring claims to the HPCC and drafting decisions. The Registry adjudication was under the control of the HPCC.<sup>93</sup>

The Registry also had a Registrar implementation who was responsible for issuing eviction warrants necessary for the implementation of HPCC decisions. In 2006 the office was staffed with a Registrar who was responsible for closing and preparing the hand over of all case files to the designated local institutions.

Registrars were appointed by the Executive Director of the HPD in consultation with the Chairperson of the HPCC.<sup>94</sup>

## **3. Relationship with UNMIK**

After the promulgation of UNMIK Regulation 1999/10 on the establishment of the HPD/HPCC, due to the specialized nature of property issues, the SRSG requested the United Nations Human Settlement Programme UN-HABITAT<sup>95</sup> to provide UNMIK with the required policy, technical and legal assistance on property issues and mandated it to manage and implement HPD operations. By Letter of Agreement dated 14 January 2000, UNMIK formally invited UN-Habitat to provide policy support to the HPD and to take responsibility for the management, staffing and the coordination of the programme and its institutional mechanisms. UNMIK undertook to provide policy guidance, supervise and monitor the HPD's activities, and subject to operational constraints, provide logistical support and engage in joint fund-raising for the project with UN-Habitat. This arrangement meant that the HPD at the time of its inception did not have its own administrative capacity and was operationally dependant on its implementing agency (UN-Habitat) and to a lesser extent on UNMIK.

---

<sup>91</sup> See section 17.13 of UNMIK Regulation 2000/60.

<sup>92</sup> See section 17.13 of UNMIK Regulation 2000/60.

<sup>93</sup> See section 17.13 of UNMIK Regulation 2000/60.

<sup>94</sup> See section 17.13 of UNMIK Regulation 2000/60.

<sup>95</sup> UN-Habitat is based in Nairobi, Kenya and is mandated to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all, see further [www.unhabitat.org](http://www.unhabitat.org).

This had significant implications for the efficiency of HPD operations. As a direct consequence, administrative and logistical support to the institution was weak throughout the inception period resulting in the start-up process being substantially slower than initially envisaged.<sup>96</sup>

In July 2002 UN-Habitat and UNMIK signed a Memorandum of Understanding (MOU) which effectively committed UN-Habitat to hand over all HPD/HPCC operations within Kosovo to UNMIK. This established the HPD/HPCC as an independent legal entity with its own administrative and financial capacity to carry out basic operations and administrative functions. However, in order to ensure support and guidance, Paragraph 4, Article 1 of the MOU expressly required that UNMIK, UN-Habitat and donor representatives were to provide advice and general oversight to the HPD through the establishment of an Advisory Board. It was also agreed at this time that UNMIK support would be significantly stepped up and that UN-Habitat would transfer its implementation responsibilities to the HPD, except with regard to the operations in Serbia proper, where UNMIK had no mandate to operate. In pursuance of the MOU, UN-Habitat handed back the Kosovo operations to UNMIK in November 2002. The fact that Serbia did not recognize the international presence in Kosovo resulted in an arrangement whereby the formal responsibilities for HPD operations within Serbia and Montenegro remained with UN Habitat. This remained the position until August 2004 when there was a formal hand over of operations there to the United Nations Office in Belgrade (UNOB). The latter operations were from this point on legally covered by the United Nations Office in Belgrade.

The members of the HPCC attended the Advisory Board's December 2005 meeting and presented their observations on the draft legislation to establish a legal framework to resolve land and commercial property disputes. Following a request from the Chairperson of the Board, the HPCC members subsequently provided comprehensive comments on the draft legislation.<sup>97</sup>

---

<sup>96</sup> Donor grants to the HPD were sent directly to UN-Habitat. Consequently, all procurement, personnel and administrative requests had to go through UN-Habitat's procurement process which was initially centralized at its headquarters (HQ) in Nairobi, Kenya. This made the logistical line extensive and unduly complicated leaving field operations severely restricted. The procurement approval process necessitated the involvement of six different management levels, involving three different organizations, located on three different continents, which proved to be very cumbersome and time consuming. It resulted in lengthy administrative delays in procurement, issuing and renewing contracts and the payment of salaries, all of which in turn impacted negatively on the overall efficiency of the institution.

<sup>97</sup> Subsequently on 4 March 2006, UNMIK promulgated Regulation 2006/10 which established the Kosovo Property Agency (the KPA) and Kosovo Property Claims Commission (the KPCC).

## CHAPTER 4

### THE APPLICABLE LEGAL FRAMEWORK AND PROCEDURES

#### 1. The Applicable Law in Kosovo

All legislative and executive authority was vested in UNMIK and was to be exercised by the SRSG.<sup>98</sup> In July 1999, the SRSG promulgated UNMIK Regulation 1999/1 which prescribed among other things that UNMIK would carry out its duties under SC 1244<sup>99</sup> by issuing legislative acts in the form of Regulations.<sup>100</sup>

UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo, as amended by Regulation 1999/24 regulated the legal system in Kosovo which comprised a mix of pre-1989 Kosovo Autonomy laws, post 1989 FRY laws, UNMIK Regulations and subsidiary instruments and international human rights standards.<sup>101</sup>

UNMIK Regulations and subsidiary instruments superseded all previous laws regulating the same subject matter. The domestic laws in force until March 1989, when Kosovo lost its autonomy, were applicable insofar as they regulated matters that UNMIK Regulations did not cover. In relation to post-1989 legislation, it could be applied only in limited circumstances such as where a court or a body or person required to implement a provision of the law determined that a subject matter or situation was not covered by the pre-1989 laws, but was covered by another law in force in Kosovo after 22 March 1989, which was not discriminatory or inconsistent with human rights standards.<sup>102</sup>

#### 2. Laws Applicable to the Resolution of Property Claims

The legal framework and procedures governing the resolution of property claims was based on a combination of UNMIK Regulations, HPCC decisions and instructions and domestic property laws.

#### *UNMIK Regulations*<sup>103</sup>

UNMIK Regulation 1999/23 established the institutions, their respective mandates and functions. It also prescribed the scope of claims falling within the jurisdiction of the

---

<sup>98</sup> See the Report of the Secretary-General on UNMIK, UN SCOR, 54<sup>th</sup> Session, UN Doc. S/1999/779 (1999) at para. 35 and 39.

<sup>99</sup> Security Council Resolution 1244, considered in Chapter 1 of this Report.

<sup>100</sup> See UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo.

<sup>101</sup> See section 1.1 of UNMIK Regulation 1999/24 on the Law Applicable in Kosovo as amended by UNMIK Regulation 2000/59.

<sup>102</sup> See section 1.2 of UNMIK Regulation 1999/24.

<sup>103</sup> UNMIK Regulations 1999/23 and 2000/60 are attached at Annex II.

HPD/HPCC and the HPCC's adjudicative jurisdiction, but stopped short of prescribing rules of procedure for the resolution of claims save that section 2.6 prescribed that the SRSRSG "shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission" and required that such rules "guarantee fair and impartial proceedings in accordance with human rights standards."<sup>104</sup> Subsequently, UNMIK Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the HPD and HPCC was promulgated and set down detailed rules of procedure and evidence governing the resolution and implementation of claims.<sup>105</sup> This Regulation was promulgated after considerable efforts of the members of the HPCC and UNMIK's Pillar II, in consultation with local authorities through the JAC and IAC.<sup>106</sup> The draft provisions of the Regulation were also subjected to extensive international legal review before it was promulgated in October 2000.

In drafting the rules of procedure and evidence it was widely recognized that the adoption of traditional adversarial court proceedings which enshrined oral hearings and elaborate procedural rights – full consideration and individualized treatment of claims, case-by-case approach and an adversarial process - could not ensure rapid decision making and had to be balanced against the claimant's countervailing right to have their claims heard within a reasonable period of time.<sup>107</sup> It was also accepted by the HPCC and other drafters of the Regulation that due process, whilst fully recognized and respected by the HPCC, could not be applied in a manner that would effectively undermine the claimant's corresponding right to have their claims heard within a reasonable period of time, as overlooking the time aspect would inevitably amount to a denial of justice - 'justice delayed is justice denied'.<sup>108</sup> The following extract from a Resolution of the HPCC described the balance that had to be achieved in drafting the provisions:

*"a fair and efficient organization of a mass claims process require that specific mass claims processing tools such as grouping of claims and fast-tracking of simple claims are used to organize the claims process; in these circumstances, first-come first-served cannot be used as the overriding criterion in determining which claims should be processed first, as focusing on individual claims based on*

---

<sup>104</sup> In particular, the rules were required to include provisions on reconsideration of decisions of the HPCC.

<sup>105</sup> UNMIK Regulation 2000/60 was promulgated on 31 October 2000.

<sup>106</sup> JAC is the Joint Advisory Council in Legislative matters and the IAC is the Interim Administrative Council. These bodies were set up to represent the local community until legitimate institutions were out in place.

<sup>107</sup> This is a primary consideration in designing any mass claims process, see Heiskanen, V., The United Nations Compensation Commission, 296 Recueil des Cours (2002), page 255; Gattani, A., The UN Compensation Commission: Old Rules, New Procedures on War Reparations, 13 European Journal of International Law (2002), page 161; Redressing Injustice Through Mass Claims Processes, Innovative Responses to Unique Challenges' edited by the Permanent Court of Arbitration, Oxford University Press, Oxford, 2006, Chapters 1-3; Das, H., "New Approaches to Evidence and Claims Resolution in International Mass Claims Processes" Thessalonica, 7 October 2005 at p. 1-2 and p. 5-8.

<sup>107</sup> HPCC/RES/7/2003 dated 11 April 2003.

<sup>108</sup> Heiskanen, V., *op. cit.*, note 107.



*dates of filing would encumber and slow down the process and thus adversely affect the legitimate interests of the great majority of the claimant population.*"<sup>109</sup>

Thus the emphasis was placed on drafting rules of procedure which struck a balance between ensuring due process, at the same time as achieving speed and efficiency. The process adopted procedures which invoked mass claims processing techniques introducing strict and objective criteria for determining whether a claim fell within a particular category with little room for discretion, an inquisitorial approach at the claims processing level, a non-adversarial approach and a written procedure at the decision making level, and standards of evidence appropriate for the special nature of the process. The framework also provided the parties with significant procedural rights in order to ensure the integrity of the process and fair procedures. The drafting of the Regulation was also influenced by the experience drawn from the CRPC in Bosnia Herzegovina where a similar restitution mechanism was established to resolve property claims in the late 1990's.<sup>110</sup>

Chapter I of UNMIK Regulation 2000/60 set down a number of substantive provisions and general principles governing the restitution process as follows:

- (i) Property rights which were validly acquired according to the applicable law at the time of the acquisition remained valid, unless otherwise prescribed by the Regulation;
- (ii) Any person who lost residential property after 1989 as a result of discrimination was entitled to restitution of that property;
- (iii) Any transaction concluded after 1989 which was illegal by virtue of the application of a discriminatory law, but would otherwise have been valid, was valid;
- (iv) Any refugee or displaced person who lost possession of residential property has a right to return to that property or to dispose of it in accordance with law.<sup>111</sup>

---

<sup>109</sup> HPCC/RES/7/2003 dated 11 April 2003 in response to a letter dated 25 February 2003 from the Ombudsperson, Marek Antoni Nowicki.

<sup>110</sup> The CRPC had similar responsibilities in relation to the collection of claims, the verification of documents, the investigation of claims and gathering additional evidence. However they were different in that the HPD/HPCC process had significant judicial elements and was conferred with the authority to implement decisions, through issuing the execution of eviction orders where necessary.

<sup>111</sup> Section 2 prescribed the following general principles and remedies: "2.1 Any property right which was validly acquired according to the law applicable at the time of its acquisition remains valid notwithstanding the change in the applicable law in Kosovo, except where the present regulation provides otherwise. 2.2 Any person whose property right was lost between 23 March 1989 and 24 March 1999 as a result of discrimination has a right to restitution in accordance with the present regulation. Restitution may take the form of restoration of the property right (hereafter "restitution in kind") or compensation. 2.3 Any property transaction which took place between 23 March 1989 and 13 October 1999, which was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions (Official Gazette SRS 30/89, as amended by the laws published in Official Gazette SRS 42/89 and 22/91) or other discriminatory law, and which would otherwise have been a lawful transaction, is valid. 2.4 Any person

Section 4 prescribed a scheme of restitution and compensation in order to resolve cases where competing occupancy and ownership right claims were filed over property.<sup>112</sup> Section 5 sought to protect the property restitution process and preserve the status quo by imposing restrictions on the disposal of apartments that could potentially have been the subject of a claim before the HPCC, until the proceedings were resolved.<sup>113</sup> This restriction applied until after the deadline for submitting claims, namely July 2003 or until the resolution of the claim, whichever was the later, and prohibited persons from transferring apartments to any other person, except where the transfer was part of an amicable settlement of the claim. Any contract relating to a sale, exchange or gift made in contravention of section 5 was null and void.<sup>114</sup>

Chapter II governed the work of the HPD and set down procedures for the collection and registration of claims, the notification and participation of parties, the enforcement of HPCC decisions and the filing of reconsideration requests. Chapter III set down the rules of procedure and evidence applicable to the adjudication of claims before the HPCC.

UNMIK also issued other Regulations which were relevant to property rights issues as follows:

- Regulation 1999/2 on Prevention of Access by Individuals and Their Removal to Secure Public Peace and Order,<sup>115</sup>
- Regulation 1999/10 on the repeal of discriminatory legislation affecting housing and property rights.<sup>116</sup>
- Regulation 2000/47 on the establishment of the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo.<sup>117</sup>

---

*who acquired the ownership of a property through an informal transaction based on the free will of the parties between 23 March 1989 and 13 October 1999 is entitled to an order from the Directorate or Commission for the registration of his/her ownership in the appropriate public record. Such an order does not affect any obligation to pay any tax or charge in connection with the property or the property transaction. 2.5 Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation. 2.6 Any person with a property right on 24 March 1999, who has lost possession of that property and has not voluntarily disposed of the property right, is entitled to an order from the Commission for repossession of the property. The Commission shall not receive claims for compensation for damage to or destruction of property.”*

<sup>112</sup> See further Chapter 7 of this Report.

<sup>113</sup> This restriction applied to any person who purchased an apartment from an allocation right holder in accordance with the Law on Housing, where neither that person nor a member of that person's family household was the occupancy right holder of the apartment before 23 March 1989, see section 5.1 of UNMIK Regulation 2000/60.

<sup>114</sup> See section 5.2 of UNMIK Regulation 2000/60.

<sup>115</sup> This Regulation was promulgated on 12 August 1999.

<sup>116</sup> This Regulation was promulgated on 13 October 1999.

<sup>117</sup> This Regulation was promulgated on 18 August 2000 and had implications for the implementation of HPCC decisions in respect of properties which were occupied by KFOR and its personnel.

- Regulation 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo.<sup>118</sup> This Regulation while transferring significant areas of administration to the Provisional Institutions of Self-Government (the 'PISG') explicitly retained the HPD under the exclusive powers of the SRSG.
- Regulation 2001/17 on the registration of contracts for the sale of real property in specific geographical areas in Kosovo.<sup>119</sup>

### ***Additional Rules and Instructions of the HPCC***

The Regulation permitted the HPD and HPCC to adopt additional rules for carrying out their respective functions, provided that they were consistent with the Regulation.<sup>120</sup> In line with this authority, the HPCC adopted additional rules in a consolidated format which elaborated further on the procedures set down in UNMIK Regulation 2000/60,<sup>121</sup> and issued instructions which regulated the claims review process.

The instructions which evolved over time supplemented existing procedures set down in UNMIK Regulation 2000/60 and also addressed systemic errors and omissions which arose in the investigation and processing of claims. These instructions established procedures which were to be utilized in resolving all common issues and questions arising in all future claims, rather than on a case-by-case basis. At each of its sessions, during its deliberations the HPCC identified areas where further guidelines were necessary in order to ensure consistency in the resolution of claims and conformity with the applicable law.

These criteria and guidelines which were developed over time were incorporated into a set of instructions which were communicated to all personnel involved in the claims resolution process by the Office of the Registry and ensured that the requirements of due process were respected in the claim review process. Instructions were issued on a wide range of issues, including verification of documents, notification of claims, preparation and content of referral reports, drafting claims processing reports (i.e. legal submissions) for the HPCC on claims, and preparing drafts for HPCC decisions. They ensured conformity of practice and procedure in the processing and presentation of claims. The HPD had to carefully observe and ensure compliance with the procedures set down in HPCC jurisprudence and instructions, in relation to procedural and evidentiary issues.

These instructions are referred to and considered further in the subsequent chapters dealing with claim processing and decision making.

---

<sup>118</sup> This Regulation was promulgated on 15 May 2001.

<sup>119</sup> This Regulation was promulgated on 22 August 2001. It imposed controls over sales of minority owned private property when the sale had the potential to change the ethnic basis in the said area, or could affect the security situation to the detriment of other minority property right holders.

<sup>120</sup> See sections 16 and 26 of UNMIK Regulation 2000/60 respectively.

<sup>121</sup> See Annex III. The additional rules largely related to provisional measures, reconsideration requests and the execution of HPCC decisions.

## ***Domestic Laws***

The substantive laws to which the HPD/HPCC had regard in order to determine property rights were primarily contained in the applicable domestic property laws, primarily in the Law on Housing Relations<sup>122</sup> and the Law on Housing.<sup>123</sup> Some other relevant domestic laws to which the HPD/HPCC had regard were:

- The Law on Basic Property Relations (Official Gazette of SFR Yugoslavia, No. 6/80);
- The Law on Expropriation (Official Gazette of SAP Kosovo, No. 37/71);
- The Law on Co-ownership of an Apartment (Official Gazette of the SAP Kosovo, No. 43/80, 22/87);
- The Law on Construction of Annexes to Buildings and the Conversion of Common Premises into Apartments (Official Gazette of the SAP Kosovo, No. 14/88);
- The Law on the Transfer of Real Property (Official Gazette of SAP, Kosovo, No. 45/81, 29/86, 26/88);
- Law on the Registration of Real Properties in Social Ownership (Official Gazette of SAP, Kosovo, No. 37/71).

## ***Applicable Human Rights Framework***

UNMIK Regulation 1999/1 determined how executive and legislative authority was to be exercised by UNMIK and obliged all persons undertaking public duties or holding public office to observe internationally recognized human rights standards.<sup>124</sup> Further, international human rights standards were part of the applicable law through, *inter alia*, UNMIK Regulation 1999/24, (as amended by 2000/59).<sup>125</sup> Section 1.3 of the Regulation required compliance with the standards set down in the following instruments:

- The Universal Declaration of Human Rights;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

---

<sup>122</sup> Official Gazette of the SAP Kosovo, No. 11/83, 29/86, 42/86.

<sup>123</sup> Official Gazette of the Republic of Serbia No. 50/92.

<sup>124</sup> See section 2 of UNMIK Regulation 1999/1 which outlawed discrimination against any person on any grounds such as sex, race, color, language, religion, political or other opinion, national, ethnic or social origin, association with national community, property, birth or other status.

<sup>125</sup> It should be noted however that these Regulations failed to clearly establish the supremacy of international human rights standards as the framework within which KFOR and UNMIK should determine the extent and quality of their actions, see Cordial, M., Applicability of International Humanitarian Law and International Human Rights Law to UN Mandated Forces, published in the International Committee of the Red Cross Report on Expert Meeting in Geneva, December 2003, available on [www.icrc.org](http://www.icrc.org). The Venice Commission of the Council of Europe identified this lack of accountability and proposed the creation of an ad hoc domestic institution to review human rights complaints against UNMIK and KFOR, see the Report of the Venice Commission, October 2004. The Recommendation of the Venice Commission was taken up by the SRSG and resulted in the promulgation of UNMIK Regulation 2006/12 on the Establishment of a Human Rights Advisory Panel.

- The International Covenant on Civil and Political Rights and the Protocols thereto;
- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on Elimination of All Forms of Discrimination Against Women;
- The Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment;
- The International Convention on the Rights of the Child.

## CHAPTER 5

### COLLECTION AND REGISTRATION OF CLAIMS

#### 1. The Claim Form

Procedures regulating the collection and registration of claims were set down in sections 7 and 8 of UNMIK Regulation 2000/60. In line with these provisions, the HPD devised internal operating procedures which focused on making the process accessible to all potential claimants. As proceedings before the HPCC were non-adversarial and claims were decided on the basis of written submissions, the process placed the inquisitorial role on the HPD which was responsible for fact-finding and collecting evidence.

Claims were submitted in a standard claim form which was designed by the HPD in Albanian, English or Serbian and could be filled out in any of these languages.<sup>126</sup> HPD officials assisted claimants in filling out the claim form.

#### 2. Procedure for Submitting Claims

The rules of procedure required claims to be filed personally, or through an authorized person, but where a party was “*unable to make a claim*” in person, the claim could be filed through a member of his or her family household.<sup>127</sup>

The option to file a claim through an authorized person was open to all claimants and was subject only to the requirement that the authorized person be in possession of a valid power of attorney.<sup>128</sup> The law also prescribed that in exceptional cases, where the provision of a power of attorney was problematic, the HPD could certify an alternative document authorizing representation of a claimant.<sup>129</sup> Where a party who sought to file a claim in a representative capacity did not hold a valid power of attorney or qualify as a family household member, the HPCC dismissed the claim on the basis that the party lacked standing to act on behalf of the person whom he or she sought to represent.<sup>130</sup>

---

<sup>126</sup> See section 8.1 of UNMIK Regulation 2000/60. Information leaflets were prepared which provided information on the claims procedure.

<sup>127</sup> See section 7.2 of UNMIK Regulation 2000/60 which defined the term ‘*family household member*’ in accordance with article 9 of the LHR which included a range of family members provided they were residing with the party asserting the property right. Subsequently the HPCC in interpreting the term in light of the categories of claims with which it was dealing directed that as article 9 was formulated in the context of determining occupancy rights, and that it was considering claims dealing with a wider range of property rights, the family members listed in article 9 could be considered such, regardless of whether or not they were actually residing with the property right holder, HPCC Instructions, 24<sup>th</sup> Session, 18 June 2004.

<sup>128</sup> Section 7.3 of UNMIK Regulation 2000/60.

<sup>129</sup> *Ibid.*

<sup>130</sup> The only option available to a party in such a case where the actual deadline for filing claims had expired was to request the HPD to place the property under its temporary administration in accordance with

In practice claimants also had to make their ID card or identity documents available for inspection when submitting their claim; a copy of the claimant's ID Card or identity documents was attached to the claim form for inclusion on the claim file. The claimant was also required to submit originals or certified copies of any documents relevant to the claim, which were within his or her possession or reasonable power of procurement.<sup>131</sup> A copy of these documents and the claimant's identity documents were attached to the claim form and the originals were returned to and remained with the claimant as the HPD did not retain original documents on files. In recognition of the historical situation whereby documentary evidence relating to property rights had in many cases been destroyed or lost, or could not reasonably be obtained, the rules of procedure permitted claimants to file claims in cases where they were not in a position to submit supporting evidence. In such cases claimants were required to submit all relevant information in relation to their claim, and the HPD was conferred with a statutory obligation to investigate and verify this information, and to conduct searches in all public records for relevant documentation.<sup>132</sup>

In order to ensure that the process was easily accessible section 7 of UNMIK Regulation 2000/60 authorized the HPD to collect and register claims at offices throughout Kosovo and at other locations as it deemed necessary for their collection.<sup>133</sup> Offices were initially opened in Kosovo in four of its regions and mobile units served minority enclaves and rural areas.<sup>134</sup> However, as it subsequently became apparent that the majority of potential claimants were dispersed outside Kosovo, in Serbia proper, Montenegro and to a lesser extent the former Yugoslav Republic of Macedonia (fYROM), representative offices were established in these regions in late 2001 following lengthy negotiations with the authorities in Serbia, namely in Belgrade (Serbia property), Podgorica (Montenegro). A small liaison office was also opened in Skopje (fYROM).<sup>135</sup>

Given that claims had to be signed in the presence of an officer of the HPD, claimants living in countries where the HPD had no presence could not file claims. In order to facilitate such claimants in filing claims an agreement was reached with the Norwegian Refugee Council whereby the HPD would accept powers of attorney issued to this organization by claimants, authorizing the filing of claims. The HPD also collected claims in Sarajevo through availing of the services of the office of the UNHCR. This

---

its jurisdiction to administer abandoned property as prescribed in section 12.1 of UNMIK Regulation 2000/60.

<sup>131</sup> See section 8.2 of UNMIK Regulation 2000/60.

<sup>132</sup> See section 10.2 of UNMIK Regulation 2000/60.

<sup>133</sup> See section 7.1 of UNMIK Regulation 2000/60.

<sup>134</sup> Considered already in Chapter 3 of this report dealing with the institutional structure of the HPD.

<sup>135</sup> These offices subsequently played a central role in the service of HPCC decisions on parties and assisted parties to file reconsideration requests and other documents necessary to process their claims. Further, satellite offices were opened in smaller towns and mobile units were deployed to service remote areas and collective centers. The establishment of a network of offices throughout FRY took on board the freedom of movement restrictions and security concerns which prevented many claimants from traveling to Kosovo to file claims.

facilitated the claim intake in Bosnia and Herzegovina in order to serve the effectiveness of claims collection and ensure equal treatment of claimants.

The HPD did not commence collecting claims until mid 2000. Section 3.2 of UNMIK Regulation 2000/60 set the deadline for submitting claims at 1 December 2001 and permitted its extension by the SRSG. Given the limited resources available to the HPD at the time of its establishment in 1999, which in turn resulted in the commencement of claim intake and operations outside of Kosovo only at the end of 2001, the deadline was extended with the last extension expiring on 1 July 2003.

### 3. Statistics on Numbers of Claims Registered

Some 29,160 claims were filed with the HPD.<sup>136</sup> The majority of claims (93.2%) were filed pursuant to section 1.2(c) of the Regulation (category C claims); 4.2% were filed pursuant to section 1.2(a) (category A claims), while 2.6% were filed pursuant to section 1.2(b) (category B claims). The highest number of claims related to properties in the Pec and Pristina regions, and the underlying chart sets out the nature, geographical breakdown and number of claims received.

<b>Region/ Category</b>	<b>Gnjilan</b>	<b>Mitrovica</b>	<b>Pec</b>	<b>Pristina</b>	<b>Prizren</b>	<b>Total</b>	<b>% total claims</b>
A	112	203	97	698	102	1.212	4.2
B	45	65	57	579	20	767	2.6
C	3.617	3.542	7.975	8.293	3.7556	27.182	93.2
<b>Total</b>	<b>3.774</b>	<b>3.810</b>	<b>8.129</b>	<b>9.570</b>	<b>3.877</b>	<b>29.160</b>	
<b>% of total claims</b>	<b>12.9</b>	<b>13</b>	<b>27.9</b>	<b>32.9</b>	<b>13.3</b>	<b>100</b>	

#### **Claimed Properties**

As somewhere in the region of 20,000 claims were collected in Serbia proper, Montenegro and FYROM, claim intake outside Kosovo proved vital to facilitating access to the process for the vast majority of claimants.

The vast majority of claims, namely 93.2%, arose out of events which occurred in the aftermath of the NATO air campaign in which Kosovo Serbs and other minorities were

<sup>136</sup> The total number of claims received fluctuated slightly over time. This was due to technical corrections made during the processing of the claims, which required that claims be split or consolidated. For example where one claimant filed multiple claims over the same property, these claims were processed together and treated as one claim. Where a claimant filed one claim which covered multiple properties, the claim had to be split into several claims, and a new claims file was created in respect of each property.



forced to flee their homes (i.e. category C claims). A number of Kosovo Albanians who had fled North Mitrovica and other enclaves also filed category C claims.<sup>137</sup>

#### **4. Notification of Claims and Publication**

The provisions of UNMIK Regulation 2000/60 addressed and regulated the participation of parties in the process to ensure that its procedures met the requisite standard of due process. Chapter II of the Regulation set out the procedural steps that were required to be taken in order to ensure that parties with a legal interest in the claimed property were notified about the claim and afforded an opportunity to participate in the proceedings. This approach was central to ensuring fairness of procedures and due process given the fact that claims were decided on the basis of written submissions and parties could not ordinarily give oral evidence or argument before the HPCC.<sup>138</sup>

The HPCC through its legal instructions impressed on HPD staff the importance of ensuring compliance with these notification procedures and to ensure that parties understood the nature of the claimant's case, and were afforded the opportunity to respond to the claim so that the process ensured meaningful participation for all the parties to the claim in the decision-making process.

Upon receipt of a claim form it was registered in the claims database and transferred to the appropriate regional office where the property was located to facilitate notification of the claim. The HPD was required to undertake all reasonable efforts to notify the occupant of the claimed property and any other parties with a legal interest in the property about the filing of the claim, and of their right to participate in the proceedings.<sup>139</sup> Parties were notified through the service of a form known as a 'notice of claim form' which set out details of the claim and the nature of the property right claimed over the property. The notice of claim form was accompanied by a notice of participation form which notified the party about his or her right to participate in the proceedings<sup>140</sup> by either filling out the notice and returning it to the HPD within thirty (30) days<sup>141</sup> (setting out their contact details<sup>142</sup> and the nature of the legal right being asserted over the property) or alternatively by attending in person at a HPD office to provide such information).

In order to facilitate the participation of parties in the proceedings, the HPD could provide the parties with summaries of the other party's claim in the language of his or her choice.<sup>143</sup>

---

<sup>137</sup> Some 700 claims were filed over properties located in the Northern part of the divided city of Mitrovica.

<sup>138</sup> See sections 19.1 and 19.2 of UNMIK Regulation 2000/60.

<sup>139</sup> See section 9.1 of UNMIK Regulation 2000/60.

<sup>140</sup> Officials based in the HPD's Regional Offices, known as 'process servers' who operated under the supervision of the Head of the Regional Office were responsible for the notification of claims.

<sup>141</sup> See section 9.5 of UNMIK Regulation 2000/60.

<sup>142</sup> See section 9.4 of UNMIK Regulation 2000/60.

<sup>143</sup> See section 9.7 of UNMIK Regulation 2000/60.

Where a person with a legal interest in the claim did not receive notification of the claim, the rules of procedure provided that he or she could be admitted as a party at any point in the proceedings, provided the claim had not been finally adjudicated.<sup>144</sup> Where a claim had been finally adjudicated, the only option open to a party to participate in the proceedings was to file a request for reconsideration of the decision within thirty (30) days of learning of the decision, but not later than one (1) year from the date of the decision.<sup>145</sup>

Notice of the claim was required to be served personally on the occupant, but where personal service was not possible, the notice could be served on any other adult person residing at the claimed property. Where a person other than the occupant accepted service of the notice, he or she was required to sign a delivery list acknowledging receipt of the notice.<sup>146</sup> Where an occupant sought to evade service, the process server after making two attempts to serve that party, was permitted to affix the notices to the door of the premises.<sup>147</sup>

In many instances notice of a party's intention to participate in the proceedings was submitted outside the thirty (30) day time period, but these requirements were administered in a flexible manner. In many cases the HPD accepted the late filing of notice. This procedural flexibility was provided for in the Regulation whereby the HPD was authorized to extend the deadline for submitting notices where it was in the interests of the efficient and fair resolution of claims, and it did not materially prejudice the rights of any party.<sup>148</sup>

The notification process involved the official publication of a list of all claims filed with the HPD in a bulletin known as the HPD's Gazette. The Gazette recorded the address of the property over which the claim was filed together with the DS number of the claim. It was distributed to the courts, municipalities, consular offices, enclaves, IDP organizations and NGOs<sup>149</sup> and was also published on the HPD's website.

---

<sup>144</sup> Section 9.2 of UNMIK Regulation 2000/60.

<sup>145</sup> See section 14.2 of UNMIK Regulation 2000/60.

<sup>146</sup> The process server was required to note the name and ID number of the person who had been served with the notices together with his or her relationship to the occupant.

<sup>147</sup> In all cases where notice of the claim was served the process server was required to fill out a form which attested to these facts.

<sup>148</sup> See section 9.10 of UNMIK Regulation 2000/60. Where the occupant of a claimed property or other notice party did not file a notice of participation form or otherwise participate in the proceedings this fact was recorded on the claim file. Alternatively where the notice of participation form was returned but the current occupant merely stated that he or she had no legal defense to the claim, but required his or her housing needs to be taken into consideration, this was recorded on the claim file and the claim was marked as "uncontested".

<sup>149</sup> Notices of claims were published in the following locations and/or in their respective publications, the municipalities and courts in Kosovo, the Norwegian Refugee Council, the Danish Refugee Council, UNHCR and the KFOR telegraph.

## CHAPTER 6

### CLAIMS INVESTIGATION AND PROCESSING

#### 1. Preliminary Review

Claims were firstly reviewed in order to ensure that they fell within the jurisdiction of the HPCC pursuant to section 1.2(a)-(c) of UNMIK Regulation 1999/23 and complied with the formal filing requirements as set down in Chapter II of UNMIK Regulation 2000/60.

Where it was determined that a claim manifestly did not fall within the jurisdiction of the HPCC, the HPD was permitted to issue a written decision which was signed by the Executive Director rejecting the claim, and setting out the grounds for the rejection.<sup>150</sup>

Claims were rejected primarily on one of the following grounds:

- (i) the claimed property was located outside the territory of Kosovo;
- (ii) the claimed property was not residential and did not fall within the definition of property as prescribed in section 1 of UNMIK Regulation 2000/60 (*ratione materiae*);
- (iii) the property right alleged was lost outside the temporal limitation period prescribed by the Regulation (*ratione temporis*); and
- (iv) the claim was not filed by a natural person (*ratione personae*).

Some 120 claims were rejected by the HPD as falling manifestly outside of the HPCC's jurisdiction.

Where the HPD rejected a claim it was open to the claimant to challenge the rejection. In such cases the HPD/HPCC's rules of procedure required the HPD to process the claim ordinarily, and refer it to the HPCC for a decision.<sup>151</sup>

#### 2. Substantive Review

The processing of claims by the HPD involved fully investigating claims and drafting legal submissions and recommendations for the referral of the claim to the HPCC for a decision. The evidence supporting the claim had to be reviewed, verified and a recommendation made as to whether it met the requirements for a valid claim.

Claims investigation and processing was inquisitorial in nature given that oral evidence could not ordinarily be given before the HPCC and the decision making process was non-adversarial. As highlighted earlier, this began with a careful claim collection and a

---

<sup>150</sup> See section 10.3 of UNMIK Regulation 2000/60.

<sup>151</sup> See section 10.4 of UNMIK Regulation 2000/60.

comprehensive interview with claimants at the time at which they filed their claims which assisted in the processing of claims. However, legal officers were not restricted to the information or documentation furnished by claimants when the claim was filed. They could contact the parties to the claim if additional information was required and conduct any other investigations, *ex officio* where necessary, in order to establish all relevant facts relating to the claim.

### **3. Access to Property Records and Verification of Documents**

Since property issues had been central during the conflict period, access to evidentiary property records met with a number of obstacles. Firstly the existing property records were incomplete and unreliable.<sup>152</sup> Additionally, property records had been destroyed, and a substantial proportion of the pre-1999 records had been removed and dislocated in Serbia proper.<sup>153</sup>

In so far as access to documents within the territory of Kosovo was concerned, the provisions of UNMIK Regulation 1999/23 and 2000/60 provided for the HPD and HPCC to have free and open access to all records. Section 10.2 of UNMIK Regulation 2000/60 prescribed that “*The Directorate may investigate a claim and obtain evidence relevant to a claim from any record held by a public body, corporate or natural person*” and that it was entitled to “*free access without charge to any records ... relevant to the settlement of a claim or for any other verification purposes.*” In relation to the HPCC, section 2.4 of UNMIK Regulation 1999/23 prescribed that it was entitled to “*free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.*”

Access to property records in Serbia proper was also vital for the verification of claims given that a substantial portion of property records from Kosovo were dislocated there. On 2 December 2002 an agreement was reached with the Ministry of Justice by which the HPD was granted access to property records located in its Ministries, dislocated court archives, the Republican Commissariat for Refugees, the Federal and Republican Directorates for Assets and cadastre offices.

A thorough search of all efficient sources of documentary evidence of property rights was vital to an accurate determination of property title. Thus one of the essential steps involved in processing claims involved HPD officers attempting to verify documents submitted in support of claims, or conducting searches *ex officio* in the public property records where insufficient documentary evidence was furnished to support a claim, or where the documents appeared not to be genuine. Section 10.2 of UNMIK Regulation 2000/60 authorized the HPD to conduct searches *ex officio* and to “*obtain any evidence relevant to a claim from any record held by a public body, corporate or natural person.*”<sup>154</sup>

---

<sup>152</sup> Considered in detail in Chapter 1 of this Report.

<sup>153</sup> *Ibid.*

<sup>154</sup> See section 10.2 of UNMIK Regulation 2000/60.

Upon instructions from the HPCC the HPD assumed an active role in collecting and verifying evidence which was achieved through dispatching verification officers to courts, cadastre offices and housing companies to collect and verify official documents and to check the information or documentation provided by claimants.

The HPCC provided guidance to the HPD on the procedures to be followed for the verification of documents through issuing legal instructions. A document could be verified as *prima facie* valid (valid on its face), or by comparison with the public records. *Prima facie* verification was considered appropriate in category C claims where the claim was uncontested. In all other cases verification had to be carried out by comparing the document with originals or copies in the public property records and decisions in such cases were never made on the basis of documentation or information submitted by the claimant alone.

A document was classified as verified when it was located in the public property records having a corresponding original, copy or credible reference there. Where a document was not found in the property records, but appeared to be *prima facie* valid, the verification officer was obliged to seek the opinion of officials working in these institutions on the validity of the document (i.e. whether the numbering on the document was consistent with the numbering system used in issuing such documents, whether it was signed by an authorised person who was employed or had been employed in that institution or when compared with documents emanating from the institution it appeared to be genuine).<sup>155</sup> Both the officials view and that of the verification officer were required to be set out in the verification report.<sup>156</sup>

In Kosovo the mainstay of the searches were carried out in the offices of Allocation Right Holders, Public Housing Enterprises (PHEs), municipal housing enterprises, courts and the Kosovo Cadastre Agency. Secondary sources of evidence such as utility companies (electricity, water and telephone records) were also a useful source of evidence of possession of property. In category C claims where a document was obtained prior to 1989 and there was no other evidence of continuous possession prior to March 1999 the HPCC required the HPD to use secondary sources of evidence in order to ascertain whether the party had been in possession of the property on 24 March 1999.

After the verification process was completed, verification officers were required to fill out a Verification Report and the HPCC's instructions set out the type of information that was required to be included in the verification report. The report listed the documents

---

<sup>155</sup> In cases of verification in the Municipal Court in Pristina, where an original document could not be found, but an officer of the court recognized his or her signature on the document, the President of the Court sent a letter to the HPD confirming that the court official was employed there and was responsible for verification of documents from 1989-1999. The HPCC relied on this and permitted a similar procedure to be applied to verification of documents where the institution concerned provided written confirmation that the person whose signature appeared on a document was employed there and was responsible for the verification of documents at the material time. Where an official recognized a colleague's signature on a document, the official's name and the colleague's name had to be set out in the verification report together with an account of how he or she recognized the colleague's signature.

<sup>156</sup> HPCC Instructions, 27<sup>th</sup> Session, December 2004.

which were sought to be verified, the property records searched and whether a corresponding original or copy of the document could be found.<sup>157</sup> Where a document was verified by comparison with the public records, a copy of the document as it appeared in the official record was required to be taken and attached to the claim file. Verification Officers were also required to state in the Verification Report, what information, if any, was available in the public property records and utility companies regarding property rights to the claimed property.

#### **4. Drafting Legal Submissions on Claims for the HPCC**

After a claim had been investigated the findings and recommendations of the legal officer investigating the claim were elaborated in a report which was drafted for the presentation of the claim to the HPCC. This was in line with the requirements of section 10.4 of UNMIK Regulation 2000/60 which prescribed a role for the HPD in the preparation of “*summaries of submissions and evidence, translations of evidence, and recommendations*” for the HPCC.

Legal submissions were prepared in a standard format in a document known as ‘a claim processing report’. Claim processing report templates were prepared in consultation with the HPCC in respect of each category of claim and were standardized over the years of operations under the HPCC’s instructions. These reports were required to contain all the basic information the HPCC needed for the adjudication of the claim together with recommendations on the claim. The HPCC also issued legal instructions on the essential facts required to be set out in these reports in order to ensure that they contained all necessary particulars for the adjudication of the claim.<sup>158</sup> The report was required to contain an outline of the facts and the legal basis for the claim, the property right alleged and any documentary evidence which supported the claim (i.e. allocation decision, contract on use, purchase contract, inheritance decision etc.). This included details on the main legal and factual issues raised by the claimant. It was also required to set out details regarding the notification of the parties affected by the claim, the nature of the verification conducted, whether more than one claim had been filed over the claimed property and so on. Where a claim was contested the report was required to outline the facts upon which the respondent contested the claim and any supporting evidence submitted by him or her. Where a claim had been rejected by the HPD for want of jurisdiction<sup>159</sup> and the rejection was challenged by the claimant, this fact was required to be set out in the report.<sup>160</sup> Referral reports in destroyed property cases were required to indicate that the claim was for destroyed property and contain a brief description of the actual state of the property, and whether it was occupied or used for any purpose.<sup>161</sup>

---

<sup>157</sup> Y-1 indicated that the document had been positively verified by the HPD *prima facie*; Y-2 indicated that the document had been positively verified by an official outside HPD; Y-3 indicated that the document had been verified by comparison with records in an office/institution outside HPD; N denoted negative verification while U denoted that verification was deemed unnecessary or was not done.

<sup>158</sup> HPCC Instructions, 23<sup>rd</sup> Session, 16 April 2004.

<sup>159</sup> See section 10.3 of UNMIK Regulation 2000/60.

<sup>160</sup> HPCC Instructions, 23<sup>rd</sup> Session, 16 April 2004.

<sup>161</sup> HPCC Instructions, 24<sup>th</sup> Session, 18 June 2004.

The report concluded with a legal analysis on the basis for the claim together with a recommendation to the HPCC as to whether the claim should be granted or rejected.<sup>162</sup> The final page of each claim processing report contained a table listing the documents submitted as evidence by the parties to the claim and indicated whether the documents were positively verified. Documents found by the HPD were also listed in this section of the report.<sup>163</sup> Where a document could not be verified the referral report was required to set out the reasons why the document could not be verified.<sup>164</sup>

It is important to note that the HPCC was not in any way bound by the recommendations of the claim processing report. It conducted, through one or more of its members, an independent review of the documentary evidence. It made its final decision on each claim, after considering the recommendations in the report, on the basis of its own independent assessment of the issues.

It was open to the HPD in exceptional circumstances to obtain an opinion from the HPCC on the interpretation of a provision of the Regulations or a particular legal or evidentiary issue relevant to the processing of claims, or the preparation of legal submissions. The HPCC in its Additional Rules set down the procedure to be followed for requesting an opinion. The procedure required the HPD to refer a claim that specifically raised the legal or evidentiary issues in question to the HPCC with a recommendation supported by legal reasoning on the manner in which it was proposed that the issue should be resolved.<sup>165</sup>

In order to enhance compliance with procedures for processing claims the HPCC requested that a briefing be organized after each session with lawyers and verification officers involved in the processing of claim in order to ensure all personnel were apprised of processing instructions on claims. This approach ensured consistency of practice in the investigation of claims and the preparation of referral reports.<sup>166</sup>

---

<sup>162</sup> The claims processing report contained the following information:

1. Summary of facts;
2. Relief sought by the claimant;
3. Due process (i.e. the date when the claim was submitted and published and whether there was any connected claim);
4. Legal analyses;
5. Conclusions;
6. Recommendations of the HPD to the HPCC;
7. A table of documents submitted by the claimant, the respondent or any other interested party.

<sup>163</sup> Note also that section 10.4 permitted the HPD to have the evidence on the file translated. An English, Albanian and Serbian version of the claims processing report was placed on all claim files before the claim was referred to the HPCC for adjudication. A search was also conducted in the HPD's claims data-base in order to ascertain whether there was any other claim filed with the HPD over the claimed property and the outcome of the search was indicated in the claims processing report. The legal officer who prepared the claims processing report in the case was required to sign and date the report once it was completed.

<sup>164</sup> HPCC Instructions, 30<sup>th</sup> Session, June 2005.

<sup>165</sup> HPCC Instructions, 20<sup>th</sup> Session, 17 October 2003. See section 3 of the HPCC's Additional Rules attached at Annex III.

<sup>166</sup> HPCC Instructions, 21<sup>st</sup> Session, 12 December 2003.

Where two or more claims were filed over the claimed property, the claims were individually investigated and presented in one claim processing report. In cases where a claimant filed multiple claims over the same property, the claims were amalgamated into one single claim file<sup>167</sup> and one claim processing report was prepared in respect of the multiple claims. Where a claimant filed a claim which covered multiple properties, a separate claim file was opened in respect of each property and the claims were individually investigated. A claim processing report was created in respect of each claim.

Once the claim processing report was completed, the claim file was referred to the Registry Adjudication Unit which was responsible for final preparation of claims for adjudication by the HPCC. The only exception was in relation to uncontested category B claims in which the HPD could issue decisions to register informal transactions provided the claim complied with the following express requirements of section 11.1 of UNMIK Regulation 2000/60:

- (i) the claimant alleged that he or she had voluntarily entered into an informal transaction of residential property which was based on the free will of the parties to the transaction, between 23 March 1989 and 13 October 1999 and the claim was uncontested; and
- (ii) the HPD was satisfied that there was sufficient evidence to prove that the claimant acquired a property right through the alleged informal transaction; and
- (iii) there was no other claim filed over the claimed property.<sup>168</sup>

In cases which complied with the provisions of section 11, the HPD issued a decision, known as a 'B-Decision' which was signed by the Executive Director of the HPD, directing that the claimant's ownership right be registered in the appropriate public record. In order to facilitate registration, the original order was sent to the claimant and a certified copy was forwarded to the Kosovo Cadastral Agency.

B-decisions did not represent binding decisions on property rights, and did not affect the right of any person to make a further claim to the HPD under section 1.2 of UNMIK Regulation 1999/23. Such further claims were required to be made within thirty (30) days of learning of the HPD's Order, but no later than one (1) year from the date of the said Order.<sup>169</sup>

HPCC decisions in relation to category B claims were required to be published in a similar manner to all other HPCC decisions.<sup>170</sup>

---

<sup>167</sup>A claimant who filed more than one claim with the HPD over the same property and sought the same relief was informed that the HPD would process one claim only and he or she was requested to withdraw the other claim(s).

<sup>168</sup> Where both a category B and C claim were filed over the same property, the claims had to be referred to the HPCC for adjudication as an exception to the HPD's jurisdiction under section 11. See also the Additional Rules of the HPCC at Rule 2.2, attached at Annex III.

<sup>169</sup> See section 11.2 of UNMIK Regulation 2000/60.

<sup>170</sup> Publication of HPCC decisions is considered in Chapter 8 of this Report.



## **5. Withdrawal of Claims**

It was open to a claimant at any stage of the proceedings prior to the adjudication of the claim to withdraw his or her claim. Given that the withdrawal of a claim resulted in it not being presented to the HPCC for a decision, the claimant was required to make such a request in writing in accordance with the form provided by the HPD for withdrawing claims.

## **6. Referral of Claims to the HPCC and the Role of the Registry**

The HPCC was assisted in the performance of its judicial functions by a Registry which provided it with administrative, technical and legal support.<sup>171</sup> The Registry was composed of a number of registrars and additional staff. The Registrar adjudication was responsible for assisting the HPCC in the period leading up to decision making, including categorizing and forwarding claims to the HPCC for adjudication and drafting decisions. An important function of Registrar adjudication was to ensure the coordination and consistency of the legal analyses and recommendations provided in claim processing reports to the HPCC. This was ensured through the Registrar conducting a final review of the claim processing report in order to ensure that the claim had been investigated fully and was prepared in accordance with the HPCC's legal instructions, such that the information and evidence necessary to assess the validity of the claim were clearly and comprehensively set out therein. Such an approach also ensured consistency of practice in the processing of claims and compliance with the applicable law. All claim files were cleared before being batched and referred to the HPCC for adjudication. Where a claim file was not fully investigated or processing was incomplete, it was referred back to the HPD for further investigation or completion. In this way the Registry carried out a quality control check of all claims before they were referred to the HPCC.

The Registrar in consultation with the chairperson of the HPCC determined the order in which claims were referred for adjudication to the HPCC<sup>172</sup> and claims raising common legal and evidentiary issues were batched together in categories for referral.<sup>173</sup> The HPCC directed the Registry to batch claims into the following categories - dismissals, regular fast track summary procedure, destroyed properties, category A claims, category B claims, contested category C claims, and reconsideration requests.<sup>174</sup>

Claims were required to be referred to the HPCC well in advance of its Sessions, which in practice was usually three (3) weeks prior to the Session so as to provide the Commissioners with an opportunity to review the claims. The legal issues, analyses and recommendations were scrutinized by the HPCC and decisions were taken on whether further evidence or written submissions was required and the scope and substance of any

---

<sup>171</sup> See section 17.13 of UNMIK Regulation 2000/60 and considered in Chapter 3 of this Report.

<sup>172</sup> See further section 17.7 of UNMIK Regulation 2000/60.

<sup>173</sup> See section 19.5(a) of UNMIK Regulation 2000/60 which permitted the HPCC to consider claims raising common legal and evidentiary issues together.

<sup>174</sup> HPCC Instructions, 25<sup>th</sup> Session, 27 August 2004.

such further submissions. This gave the HPCC an opportunity to request the HPD to conduct additional investigations where this was deemed necessary for a determination of the claim.<sup>175</sup>

---

<sup>175</sup> See section 21.2 of UNMIK Regulation 2000/60.

## **CHAPTER 7**

### **DECISIONS OF THE HPCC**

#### **Introduction**

The overall purpose of establishing a claims resolution mechanism was to put in place a process that could provide an effective remedy to claimants within a reasonable period of time, while at the same time ensuring fairness of procedures and due process in line with human rights standards.

#### ***Mass Claims Processing***

A number of procedural provisions in UNMIK Regulation 2000/60 permitted the use of mass claims processing techniques in order to expedite the decision making process as follows:

- Section 19.1 and 19.2 permitted decision making on the basis of written submissions and no party could give oral evidence unless invited to do so;<sup>176</sup>
- Section 19.5(a) permitted claims raising common legal issues to be considered together;
- Section 19.5(b) permitted the delegation of certain claims review and evidentiary review functions to the Registrar, and the staff members of the HPD assigned to the service of the HPCC, subject to the supervision of the HPCC;
- Section 19.5(c) authorized the utilization of computer databases, programs and other electronic tools as were deemed appropriate to expedite decision-making;
- Section 19.5(d) permitted the HPCC to take any other measures which it considered appropriate to expedite its decision-making;
- Section 22.9 authorized the HPCC to sign a single cover decision for many individual decisions in cases where the numbers of similar claims before it were high;
- Section 23 permitted the processing of uncontested category C claims in a fast track summary procedure.

#### ***Evidentiary Procedures***

In drafting UNMIK Regulation 2000/60 the HPCC adopted evidentiary provisions which effectively shifted the traditional burden of proof away from the claimant in order to take account of the impact which the conflict had on the circumstances of claimants, and on the public property records. The conflict had brought about a situation where the availability of records and information had been seriously impaired. Cadastral and

---

<sup>176</sup> Section 19.1 and 19.2 of UNMIK Regulation 2000/60.

property records had in many instances been rendered unreliable, or had been destroyed, tampered with or removed by the domestic authorities in 1999.<sup>177</sup> Further, the claimants themselves in very many cases had fled without their documentation, and any supporting documentation which they might have possessed was either lost or destroyed in the wake of the conflict.<sup>178</sup> Further, genuine security concerns and limited freedom of movement prevented or discouraged the majority of claimants from returning to their homes or municipalities to source documentation. In these circumstances where much of the evidentiary records which could have been used to substantiate claims had been destroyed or lost, the application of evidential standards which imposed the sole duty to adduce evidence on the claimant would have been unfair. In response to these particular circumstances, UNMIK Regulation 2000/60 provided that the HPCC was not bound, but could be guided by, the rules of evidence applied in the local courts in Kosovo.

### Burden of proof

In traditional adversarial court proceedings the rules of evidence require the party making the claim to shoulder the burden of adducing evidence to prove the claim. Section 8 of UNMIK Regulation 2000/60 adopted a less onerous approach to the requirement to prove facts by simply requiring claimants to furnish all necessary particulars of their claim in the claim form and to submit with it the originals or certified copies of any documents relevant to the claim, which were in his or her possession or reasonable power of procurement.

Where evidence, in particular property records, was not reasonably available to the claimant, or where the evidence submitted was incomplete the claimant could still file a claim and was simply required to submit all available relevant evidence in relation to his or her claim. In such cases the process effectively imposed on the HPD a statutory obligation to engage in evidence collection and verification of documents.<sup>179</sup> Thus the evidence gathering and fact-finding role of the HPD effectively assumed the traditional burden which rested on claimants to establish facts and prove their claim.<sup>180</sup>

### Standard of proof

Where the existence of a property right was not contested by any party opposing a claim, the standard of proof in HPCC proceedings required claimants to show *prima facie* evidence of a property right. This could be met by sourcing direct evidence in the form of property records disclosing title or possession rights or through adducing secondary evidence such as documentation which recorded the fact that the necessary steps had been taken for the claimant to acquire the property right alleged.

---

<sup>177</sup> Considered already in Chapter 1 of this Report.

<sup>178</sup> Permanent Court of Arbitration Publication, *op. cit.*, note 107, at p. 61.

<sup>179</sup> See section 10.2 of UNMIK Regulation 2000/60.

<sup>180</sup> Considered in Chapter 5 of this Report.

The process took account of the difficulties experienced in verifying property records submitted by claimants in support of claims. In cases where corresponding documents could not be located in the public records, but documents or records were found which constituted indirect evidence of the alleged property right, the HPCC accepted this as constituting *prima facie* evidence of the property right alleged. In assessing the evidence it held that failure to find corresponding documents did not necessarily give rise to the inference that the documents produced by the claimant were not authentic.

In relation to uncontested category C claims, section 23 of UNMIK Regulation 2000/60 permitted the HPCC to process such claims in a fast track summary procedure<sup>181</sup> and a very basic evidentiary requirement was imposed on claimants in such cases. The HPCC was permitted to grant a claim and make an order for repossession of the claimed property where a claimant made a *prima facie* case that he or she had been in uncontested possession of the property prior to 24 March 1999.<sup>182</sup> A category C claim was deemed to be uncontested in cases where “*either the respondent ha[d] chosen not to participate in the proceedings or ha[d] not contested the validity of the claim*” such as where he or she only referred to his or her housing needs as a basis for occupying the property or put forward allegations that were so vague and ambiguous, that they did not constitute a legal challenge to the claim.

In category C cases where the claim was uncontested but the supporting documents could not be verified but appeared to be valid on their face, the HPCC directed that the HPD should investigate whether or not there had been possession of the property by searching utilities, including telephone directories, regardless of whether the claimant produced utility bills.<sup>183</sup>

In cases in which the claimant’s property had been totally destroyed and no new structure had been erected but the land parcel was not occupied the HPCC directed that such claims were effectively uncontested and were therefore to be processed in accordance with the fast-track procedure for processing uncontested category C claims, namely in accordance with the summary procedure.<sup>184</sup> Further, in uncontested destroyed property cases where there was no documentary evidence linking the claimant with the claimed property, the HPCC accepted a written declaration from neighbors confirming that the

---

<sup>181</sup> See section 23.1 of UNMIK Regulation 2000/60.

<sup>182</sup> In applying section 23 of UNMIK Regulation 2000/60 the HPCC held that the claimant must show the following:

- (a) *prima facie* on the basis of the evidence presented a property right in respect of the claimed property;
- (b) [the] claim is uncontested in that either the respondent has chosen not to participate in the proceedings or has not contested the validity of the claim;
- (c) there is evidence that the claimant ... was in uncontested possession of the property prior to 24 March 1999; and
- (d) all other requirements of section 1.2(c) of Regulation 1999/23 and sections 2.5 and 2.6 of Regulation 2000/60 have, *prima facie*, been met in each case.

<sup>183</sup> HPCC Instructions, 23<sup>rd</sup> Session, 16 April 2004.

<sup>184</sup> HPCC Instructions, 24<sup>th</sup> Session, 18 June 2004.

claimant used to live in the property formerly located at the land parcel alleged by the claimant.<sup>185</sup>

As pointed out above, in assessing evidence the HPCC's rules prescribed that it "*may be guided but [wa]s not bound by the rules of evidence applied in local courts in Kosovo*".<sup>186</sup> By adopting this approach, the procedures set down in UNMIK Regulation 2000/60 took priority. The only evidentiary requirement was that evidence be reliable and section 21.1 permitted the HPCC to "*consider any reliable evidence, which it consider[ed] relevant to the claim*",<sup>187</sup> including evidence presented by the HPD concerning the reliability of any public record.

The HPCC accepted as a certified copy of the original any document certified by the HPD as a true copy of the original in terms of section 8.2 of Regulation 2000/60 and any copy which has been certified in terms of the Law on the Certification of Signatures, Manuscripts and Copies.<sup>188</sup>

In addition to considering written submissions and evidence submitted by the parties to the proceedings, section 2.4 of UNMIK Regulation 1999/23 provided for a compulsory process for obtaining evidence prescribing that the HPCC was "*entitled to free access to any and all records relevant to the settlement of a dispute submitted to it*." It was also open to the HPCC to consider written or oral submissions from any intergovernmental, governmental or non-governmental entity or expert witness on any matter relevant to a claim.<sup>189</sup>

This provision provided the legal basis for the HPCC's authority to seek expert advice in relation to verification of supporting documentary evidence. The HPCC has on numerous occasions made use of this authority and the systematic use of expert opinions has been sought in all cases where it was necessary to verify the authenticity of signatures on a document either *suo motu* or where allegations of forgery were raised by a party to the proceedings.<sup>190</sup>

### ***Delegation of Authority to Review Claims***

Pursuant to section 19 of UNMIK Regulation 2000/60 the HPCC could appoint one of its members to carry out any of its functions and delegate certain claims review and evidentiary review functions to the Registrar, and the staff members of the HPD assigned to the service of the HPCC, subject to the supervision of the HPCC. In order to expedite

---

<sup>185</sup> HPCC Instructions, 25<sup>th</sup> Session, 27 August 2004.

<sup>186</sup> See section 21.1 of UNMIK Regulation 2000/60.

<sup>187</sup> *Ibid.*

<sup>188</sup> Official Gazette SAPK, No 37/71.

<sup>189</sup> See section 19.3 of UNMIK Regulation 2000/60.

<sup>190</sup> The experts conducted research on the signature, comparing it with sample signatures of the party relying on the document. Where a firm conclusion as to whether the signature was genuine could not be reached, the HPCC in order to obtain further clarification on the matter, appointed a member to hear oral evidence from the parties pursuant to section 19.4 of UNMIK Regulation 2000/60.

the resolution of claims the HPCC delegated to the local commissioner the authority to review certain evidence and to carry out most oral hearings of parties and witnesses.

The adoption of strict and objective criteria for determining whether a claim fell within a particular category left little room for discretion. This facilitated the delegation of evidentiary review functions in respect of certain categories of claims which were exercised in consultation with the national Commissioner. Legal instructions regulating the evidentiary review procedure were adopted by the HPCC and evolved throughout its sessions in order to expedite decision making.

Subject to the HPCC's oversight, the Registrar was conferred with responsibility to conduct evidentiary review in the following categories of claims once the necessary precedents had been established by the HPCC:

- (i) Uncontested category C claims;
- (ii) Destroyed property cases where there was evidence of possession prior to 24 March 1999;
- (iii) Cases in which a category C claimant conceded having disposed of his or her property right, but sought revision of the purchase price or cancellation of the contract, which relief was outside the jurisdiction of the HPCC, and the claim had to be referred to the local court pursuant to section 22.1 of UNMIK Regulation 2000/60;
- (iv) Category A claims where the claimant, who enjoyed an occupancy right and had never been dispossessed of his or her property, sought relief because he or she was prohibited from privatizing his or her occupancy right, which relief was outside the jurisdiction of the HPCC;<sup>191</sup>
- (v) Claims that had to be dismissed because the claimant failed to submit a valid Power of Attorney; and
- (vi) Reconsideration requests which were manifestly without merit.

## **2. Proceedings before the HPCC**

As a general rule, the HPCC decided claims on the basis of written submissions and documentary evidence. Parties therefore submitted their evidence and arguments to the HPCC through the HPD, and had a right to know the evidence and submissions of other parties and to put forward evidence and submissions in response. Parties were not entitled to give oral evidence unless invited to do so,<sup>192</sup> as organizing for the participation of some thousands of claimants would have entailed a significant drain on resources and time, thereby conflicting with the claimants' rights to a remedy within a reasonable

---

<sup>191</sup> From 1992 onwards the 1992 Law on Housing allowed an occupancy right holder to purchase the property on a subsidized basis, considered further in Chapter 1 of this Report.

<sup>192</sup> See section 19.1 of UNMIK Regulation 2000/60. In those exceptional cases where the HPCC held an oral hearing the rules of procedure required that it take place in public and be conducted under the direction of the Chairperson of the HPCC with due notice having been given to the parties, see section 19.2 of UNMIK Regulation 2000/60. Three oral hearings took place before the full HPCC while some 67 hearings took place before the National Commissioner.

period of time.<sup>193</sup> Further, the fact that claimants were dislocated throughout FRY and further afield would have resulted in only a few claimants being able to exercise the right to participate in hearings.

The HPCC therefore decided claims on the basis of the claim file referred to it by the HPD, which contained the evidence and submissions of the parties to the claim and the evidence gathered by the HPD. The rules of procedure also provided that the HPCC could appoint one of its members to carry out any of its functions, including the taking of oral evidence.<sup>194</sup> On a number of occasions the national Commissioner was requested by the Chairperson to hear oral evidence from the parties.<sup>195</sup> These hearings were designed to gather facts and were not generally adversarial in nature.

UNMIK Regulation 2000/60 provided that decisions normally be taken unanimously but where a consensus could not be reached, they be decided by majority vote.<sup>196</sup> Where the HPCC found that additional information was necessary for it to reach a determination on the issues raised in the claim it could refer it back to the HPD with an order that it conduct additional investigations in relation to the claim.<sup>197</sup> This normally involved additional verification or searches for documents or interviewing parties to the claim. Where a claim was referred back a note of this fact was required to be inserted on the front page of the claim processing report, together with the specific question or action requested by the HPCC. Once this question or action was dealt with a note on the outcome of the follow-up action and response was inserted on the referral report and the claim was re-submitted for adjudication to the next HPCC session.<sup>198</sup>

Prior to deciding a claim, the HPCC could issue any interim order consistent with UNMIK Regulation 2000/60, which it considered necessary for the orderly and expeditious resolution of claims<sup>199</sup> and it could issue provisional measures of protection in cases where it appeared necessary to protect a party's interests from irreparable harm.<sup>200</sup> It could also refer specific issues arising in connection with a claim, which were

---

<sup>193</sup> As a rough guide, if it was assumed that half of a working day was spent by the HPCC on each claim and on each reconsideration request in an oral hearing, and that the Commissioners worked on a full time basis instead of in six, week-long sessions annually, the process would have taken 67 years to complete.

<sup>194</sup> See section 19.4 of UNMIK Regulation 2000/60.

<sup>195</sup> The Local Commissioner held oral hearings in relation to some 67 claims, while the HPCC held oral hearings on three (3) occasions during sessions.

<sup>196</sup> See section 20.3 of UNMIK Regulation 2000/60 which also provided that if two members of a panel were present and consensus could not be reached, the Chairperson of the Panel shall defer consideration of the claim to the next session of the Panel. In only one instance was a claim decided by majority vote, as per HPCC/REC/91/2007 at para. 8(b).

<sup>197</sup> See section 21.2 of UNMIK Regulation 2000/60.

<sup>198</sup> HPCC's Instructions, 21<sup>st</sup> Session, December 2003 and 30<sup>th</sup> Session, June 2005. The HPD endeavored to deal with all claims that were referred back by the HPCC expeditiously and to return them to the next session of the HPCC.

<sup>199</sup> See section 19.7 of UNMIK Regulation 2000/60.

<sup>200</sup> See section 24 of UNMIK Regulation 2000/60. Upon a recommendation of the HPD, whether on the request of a claimant or otherwise, the HPCC could pursuant to section 24.1 of UNMIK Regulation 2000/60 issue provisional measures of protection where it appeared likely that, if such measures were not issued, a party would suffer irreparable harm. Pursuant to section 24.2 of this Regulation, in exceptional circumstances, on the recommendation of the responsible law enforcement agencies and where necessary to



not within its jurisdiction, to a competent local court or administrative body or tribunal.<sup>201</sup>

### **3. Decisions of the HPCC**

The HPCC could either grant or dismiss a claim or make any decision or order that was necessary to give effect to UNMIK Regulation 2000/60 including orders for restoration of property rights, repossession of property, registration of property rights in the public property records and compensation. It could not award remedies other than those provided for in UNMIK Regulation 2000/60<sup>202</sup> and it could limit its decision to rights of possession over the property where that would provide an effective remedy.<sup>203</sup>

Section 22.7 permitted the HPCC to make the following orders:

- (a) decide such property rights as were necessary to resolve the claim;
- (b) make an order for possession of the property in favour of any party;
- (c) order the registration of any property right in the appropriate public record;
- (d) where necessary to resolve a claim, vary the terms of any contract made for the purpose of avoiding a discriminatory law, so as to reflect the actual intention of the parties to the contract;
- (e) cancel any lease agreement in respect of a property which was subject to an order in terms of UNMIK Regulation 2000/60, and make ancillary orders to give effect to the cancellation;
- (f) refuse or grant a claim and refer issues raised therein to the local court; and
- (g) refer a claim back to the HPD for further investigation.

Where a claim was made by a family member of the property right holder<sup>204</sup> the HPCC could decide any property right in the name of the property right holder, and make an order for repossession in favour of the claimant.<sup>205</sup> Following the HPCC's decision the local courts in Kosovo retained jurisdiction to determine any legal issue not decided by the HPCC.<sup>206</sup>

---

control a continuing threat to public security, provisional measures could include the eviction of the current occupant from the claimed property. The HPCC was only permitted to make such an order where it was satisfied that there was evidence of prior uncontested occupation of the property by the claimant. An eviction order issued pursuant to section 24.2 of the Regulation could be executed by the responsible law enforcement authorities without notice. Further procedural guidelines on seeking provisional measures were set down in Section 4 of the HPCC's Additional Rules attached at Annex III. Note that provisional measures were never requested by the HPD or the law enforcement agencies or ordered by the HPCC.

<sup>201</sup> See section 22.1 of UNMIK Regulation 2000/60.

<sup>202</sup> Section 22.3 of UNMIK Regulation 2000/60.

<sup>203</sup> Section 22.5 of UNMIK Regulation 2000/60.

<sup>204</sup> Pursuant to section 7.2 of UNMIK Regulation 2000/60.

<sup>205</sup> See section 22.6 of UNMIK Regulation 2000/60. Such a decision did not determine or affect any legal issue between the claimant and the property right holder or any other person who was not a party to the claim.

<sup>206</sup> See section 22.6 of UNMIK Regulation 2000/60. Note also the SRSG's Clarification Order which is considered in Chapter 2 of this Report.

#### 4. Form of Decisions

Section 22 of UNMIK Regulation set down detailed rules and procedures regarding HPCC decisions. The HPCC was bound by the principles established in its own decisions, unless compelling reasons existed for deviating from those principles.<sup>207</sup> This provision imposed a requirement on the HPCC to be consistent in applying the law to claims raising similar legal and evidentiary issues. A number of mechanisms were put in place to ensure consistency of HPCC decisions with its precedents. A decision index searchable by key word was developed. The review mechanism in place for clearing claim processing reports, whereby they were scrutinized by the head of CCPU, Registrar Adjudication and the HPCC itself also ensured that decisions were issued in accordance with the earlier decisions.

Decisions of the HPCC were binding and enforceable and were not subject to review by any other judicial or administrative authority in Kosovo.<sup>208</sup>

Decisions were required to be reasoned and in writing, setting out the material facts and property rights found by the HPCC. They were required to be signed by the Chairperson of the HPCC.<sup>209</sup> Section 22.8 of UNMIK Regulation 2000/60 required decisions to contain the following essential details:

- (i) date of adoption;
- (ii) the names of the parties and their representatives;
- (iii) the reasons for the decision (including material facts and property rights found to exist);
- (iv) the order of the HPCC.

Initially the HPCC granted decisions in respect of individual claims. Subsequently in order to allow for the rapid resolution of claims it utilized a technique provided for in section 22.9 of UNMIK Regulation 2000/60 which permitted it to issue one decision in respect of batches of claims raising similar legal issues, known as “a Cover Decision”. Cover decisions were progressively developed through the HPCC’s jurisprudence to cover all legal issues. Some applied to a large number of claims such as category C dismissals, or destroyed property cases while others applied to a few or lesser number of claims such as dismissals in category A claims where the claimants failed to prove occupancy rights. The HPCC issued instructions to the Registry on the drafting of cover decisions.<sup>210</sup> In its instructions it highlighted the importance of ensuring adherence to precedents in reasoning used in claim processing reports and in draft decisions due to the fact that it was bound by its own previous decisions, unless exceptional circumstances existed for departing from them. Precedent decisions were prepared by the Registrar in

---

<sup>207</sup> See section 22.2 of UNMIK Regulation 2000/60. The HPCC in its instructions highlighted to the HPD the importance of adhering to precedents in its reasoning in referral reports and draft decisions due to the fact that it was bound by its own previous decisions, unless exceptional circumstances existed for departing from them, HPCC Instructions, December 2001.

<sup>208</sup> See section 2.7 of UNMIK Regulation 1999/23.

<sup>209</sup> See section 22.9 of UNMIK Regulation 2000/60.

<sup>210</sup> HPCC Instructions, 21<sup>st</sup> Session, 12 December 2003.

consultation with the HPCC in respect of each batch of claims. A total of 17 different types of cover decisions were prepared.

The Chairperson by signing the Cover Decision approved all individual decisions identified and listed by the claim number (DS number) in the Cover Decision.<sup>211</sup> Decisions were issued with a decision number, which ran consecutively, and did not return to “0” at the beginning of each year. Some 209 first instance decisions were issued by the HPCC, to include both individualized decisions and cover decisions.

Where a claim was decided by Cover Decision, in order to ensure clarity for the parties, an individual decision was prepared by the Registrar in respect of each claim which set out the claimant’s individual property details and the relief granted by the HPCC. It referred to the Cover Decision of the HPCC and the particular paragraph which set out the reasons for the HPCC’s decision in respect of the claim.

In order to reduce the risk of forgery, all HPCC Decisions were required to bear a seal and the signature of the Chairperson of the HPCC.<sup>212</sup> The Registrar certified the individual decisions<sup>213</sup> which were served in each case together with the Cover Decision on the parties to the claim.<sup>214</sup>

The Registrar was also authorized to correct any textual error in a HPCC decision, which did not materially affect the rights of any party to the proceedings and where the Chairperson of the HPCC agreed with the correction.<sup>215</sup>

## **5. HPCC Orders and Remedies**

The HPCC could either grant or reject a claim.

Where the HPCC granted a claim in favour of the claimant, the consequential relief or remedies which could be granted varied according to the category of claim and the circumstances of the original dispossession. It could not award remedies other than those provided for in UNMIK Regulation 2000/60.<sup>216</sup>

The remedies that could be granted in respect of claims are best considered under the following headings:

---

<sup>211</sup> See section 22.9 of UNMIK Regulation 2000/60.

<sup>212</sup> HPCC Instructions, 5th Session, January 2001. For security reasons the Commissioners names were not listed in HPCC decisions or evictions warrants which issued thereafter to enforce decisions.

<sup>213</sup> See section 22.9 of UNMIK Regulation 2000/60. A copy of an original document signed by the Chairperson which had been sent to the Registrar by facsimile transmission of the original was sufficient authority for any actions taken pursuant to the document.

<sup>214</sup> As to the service of decisions on claimants, see Chapter 8 of this Report.

<sup>215</sup> See section 22.11 of UNMIK Regulation 2000/60.

<sup>216</sup> Section 22.3 of UNMIK Regulation 2000/60.

### *Category A claims*

Where it was found that the claimant had a valid occupancy or ownership right the HPCC ordered restitution in the form of restoration of the property right unless restitution in kind was no longer possible, such as in cases where the property had been privatized and had been further sold on to a new owner, in which case compensation was the appropriate remedy.<sup>217</sup>

Where restitution in kind was ordered and the property was illegally occupied, an order requesting the illegal occupant to vacate the property within thirty (30) days was granted, with notice that failure to comply with the order would result in the occupant being evicted from the property.

UNMIK Regulation 1999/23 read together with the provisions of sections 1 and 4 of Regulation 2000/60 limited the right to restitution for loss of property rights brought about as a result of discrimination to those with occupancy or ownership rights.<sup>218</sup> Category A claimants with less than perfected occupancy rights were not entitled to restitution and those who had failed to complete all the steps necessary to acquire and perfect an occupancy right had their claims rejected and had to seek their remedy through the local courts. This meant that the category A claimants who had been subjected to discrimination, but had not perfected their occupancy rights, were left without a remedy before the HPCC. The HPCC highlighted this issue and proposed compensation as a remedy and called on UNMIK to take the necessary steps by way of legislative amendment so as to address this issue. To date no steps have been taken to address this matter.

However, the HPCC has recently learned that in certain category A claims dismissed by the HPCC on the basis that the claimant had failed to prove an occupancy right over the claimed property, it was open to the claimant to file a claim for compensation with the Kosovo Trust Agency (KTA). This arose in cases where the claimant asserted that the failure to complete the steps necessary to acquire an occupancy right was due to the discriminatory practices of the Allocation Right Holders, namely the Socially Owned Enterprise (SOE) or the Publicly Owned Enterprise (POE) which fell under the jurisdiction of the KTA (which was responsible for their management, privatization or liquidation) which prevented him or her taking the necessary steps to satisfy the requirements for acquiring an occupancy right.<sup>219</sup> The KTA recognized these claimants as creditors of the SOEs or POEs and accepted that where their allegations proved to be well founded they were entitled to compensation as recompense for discriminatory practices which prevented them acquiring an occupancy right. It should be noted however that the focus of the claim and the relief that could be awarded by the KTA in such cases

---

<sup>217</sup> See section 2.2 and 3.3 of UNMIK Regulation 2000/60.

<sup>218</sup> The HPCC engaged in a detailed consideration of this issue in its earlier decisions dealing with category A claims, as per HPCC/D/14/2001/A; HPCC/D/18/2001/A and HPCC/D/19/2001/A.

<sup>219</sup> The conclusion of a contract on use and/or entering into possession of the claimed property were both essential prerequisites for acquiring an occupancy right under the Law on Housing Relations.

was limited to monetary compensation for discrimination, as opposed to relief over the claimed property.<sup>220</sup>

In August 2005 the HPCC amended its jurisprudence in such cases by holding that in view of the alleged discriminatory and irregular manner in which the claimed properties had been subsequently allocated (to the category C claimants), it considered it appropriate to refer the issues as to the determination of the legal relief, if any, available to the category A claimant under the applicable law, to the competent local court. In order to prevent this procedure from being undermined the HPCC made a number of consequential orders. It ordered that until such time as the court reached a decision on such a case, the category C claimant was prohibited from transferring his or her property right to any other person, except where such a transfer could be effected amicably with the category A claimant.<sup>221</sup> Further, in recognition of the fact that it was undesirable that such a prohibition remain in place if the category A claimant did not actively pursue the envisaged court proceedings, the HPCC ordered that the freeze on transferring the property would lapse if the proceedings were not instituted in the local court within sixty (60) days.

### ***Category B claims***

In category B claims where the HPCC found that a claimant had acquired an ownership right over the claimed property through the conclusion of an informal transaction, it ordered that the ownership of the claimant be registered in the appropriate public record.<sup>222</sup>

The granting of an order in respect of a category B claim did not prevent the local court from amending the public record pertaining to the registration of ownership rights over the property, where it subsequently decided to annul the transaction concerned. The HPCC was solely ordering the registration of the property right pursuant to the informal unregistered transaction.

### ***Category C claims***

In category C claims, where it was found that a claimant had a right of lawful possession over the claimed property or another form of property right which conferred on him or her a right to take possession of the property, and there were no conflicting rights over the property, (such as a competing category A claim<sup>223</sup>) the HPCC ordered repossession of the claimed property in favour of the claimant.

---

<sup>220</sup> In order to facilitate claimants where they consented and on a request from the KTA, the HPD undertook to release the claim file to the KTA.

<sup>221</sup> The HPCC had jurisdiction to make such orders pursuant to section 27(g) of UNMIK Regulation 2000/60.

<sup>222</sup> See section 2.4 of UNMIK Regulation 2000/60.

<sup>223</sup> Considered below.

Section 22.5 of UNMIK Regulation 2000/60 expressly provided that the HPCC could “*limit its decision to rights of possession of the claimed property where that would provide an effective remedy for the claim*”. The HPCC adopted this approach to decision making in category C claims, where the remedy to be awarded to successful claimants was a right to repossession of the property, and did not involve a determination of his or her actual property right over and above the right of possession. An exception to this was in relation to cases where there were competing valid category A and C claims filed over the same property. These situations are considered below.

In cases where the HPCC ordered repossession of the claimed property in favour of the claimant and where the property was illegally occupied, an order directing the illegal occupant to vacate the property within thirty (30) days was granted, with notice that failure to comply with such order would result in that party being evicted from the property.

### ***Order of restitution in cases of valid competing category A and C claims***

UNMIK Regulations 1999/23 and 2000/60 adopted the following general principles in relation to restitution in cases where there were competing category A occupancy right and category C ownership right claims filed over the same property.

In relation to the right to restitution, any claimant whose occupancy right was cancelled between 23 March 1989 and 24 March 1999 as a result of discrimination was entitled to restitution in accordance with the Regulation.<sup>224</sup> Section 3.3 of the Regulation prescribed that restitution in kind was to be awarded, unless the ownership of the property had been acquired by a natural person through a valid voluntary transaction for value before the date the Regulation entered into force (which was 31 October 2000), in which case compensation was the appropriate remedy.<sup>225</sup>

Section 4.2 of the Regulation provided for an exception to section 3.3 wherein it prescribed that where the socially owned apartment was, subsequent to the cancellation of the occupancy right, purchased from the allocation right holder by a party under the Law on Housing (which provided the framework for the privatization of socially owned property), who was still the current owner of the property, the claimant with the occupancy right had a right to ownership of the apartment upon payment to the HPD of a sum to be determined by it. The current owner (being either the category C claimant or Respondent on the proceedings) who had purchased the apartment under the Law on Housing was entitled to compensation for his or her loss of the ownership right.

---

<sup>224</sup> See sections 1.2(a) of UNMIK Regulation 1999/23 and 2.2 of UNMIK Regulation 2000/60.

<sup>225</sup> Section 5 of UNMIK Regulation 2000/60 prohibited sales after UNMIK Regulation 2000/60 came into effect until the resolution of claims filed with the HPD, or until after the deadline for claim intake, whichever the latter. Any contract relating to a sale, exchange or gift made in contravention of section 5 was null and void.

The difficulty with the adoption of this formula for regulating the right to restitution for loss of property rights was that it was very limited. It applied only in cases where there were competing valid occupancy rights and ownership rights filed over socially owned apartments. It did not provide any form of compensation for C claimants with other forms of property rights who were affected by an award of restitution in kind in favour of a category A claimant with a valid occupancy right. In cases where a category C claimant had not privatized his or her occupancy right or only enjoyed a lawful right of possession over property, they saw their property right superseded by the category A claimant's occupancy right as the provisions of section 4.3 of the Regulation prescribed that with the exception of C claimants with ownership rights "*no person whose rights are affected by a decision of the Commission awarding restitution in kind [in favour of an A claimant] shall be entitled to any form of compensation*". Thus, the property rights of category C claimants in such cases were effectively subordinated to the rights of the pre-1989 occupancy right holders to restitution. In such cases refugees or displaced persons who had a right to property on 24 March 1999, who had lost possession of that property due to events arising out of the NATO air campaign, were not entitled to an order from the HPCC for repossession of the property, or to compensation for loss of their property right. If ever any scheme or basis is devised for further compensation as urged by the HPCC in relation to unsuccessful category A claimants, consideration should be given to extending it to this class of unsuccessful category C claimants.

### ***Compensation***

The HPCC's jurisdiction to award monetary compensation was limited to claims which fell within the express provisions of section 4 of UNMIK Regulation 2000/60, as outlined above in relation to certain successful category A and C claims. It did not have jurisdiction to award compensation for damage to or destruction of residential property as section 2.6 of UNMIK Regulation 2000/60 expressly prescribed that "*The Commission shall not receive claims for compensation for damage to or destruction of property*".

### ***Destroyed Property Claims***

Where a claimant proved that he or she had a property right and satisfied the requirements for an order for repossession at the time of the destruction of the property, the HPCC issued an order known as "a declaratory order" confirming the claimant's right of lawful possession over the property at the time of its destruction. As stated above, the HPCC did not have jurisdiction to award compensation to claimants in such cases.

In destroyed property cases, the granting of an order for repossession by the HPCC depended on whether the site was occupied, the nature and form of the occupation and whether the claimants had any extant rights in respect of the underlying land.

In cases where the property had been totally destroyed and a substantially different form of structure had been erected on the land parcel (e.g. a building for commercial

purposes), the HPCC recognized that it was legally impossible to restore possession of the destroyed property to the claimant. It held that the claimant had an entitlement in such cases to those forms of relief provided for in the domestic legal system. As the determination of these issues fell outside of its jurisdiction, it referred the matter to the local courts.

The situation was somewhat different in cases in which the property had been partially destroyed and the respondent had illegally occupied it and built a new residence alongside the claimant's residence. In such cases the HPCC held that as the new structure on the land parcel was a residential structure which was not incomparable in terms of its purpose or otherwise with the structure that was on the land parcel before, there was no reason why the claimant's rights in terms of section 2.5 and 2.6 of UNMIK Regulation 2000/60 should not be recognized. In these circumstances it granted an order restoring possession of the land parcel and the structure on it. The respondent was ordered to vacate the property within thirty (30) days of the delivery of the order, or failing this, that he or she would be evicted from the property. The HPCC referred the claim to the municipal court for the purpose of determining the relief that was appropriate in respect of the costs of erecting the structure on the land parcel.

In cases where the property had been destroyed and the land parcel was illegally occupied, being use as a garden or a parking lot, the HPCC in addition to granting a declaratory order, also granted an order for repossession of the land parcel and ordered the illegal occupant to vacate the property where the claimant had a right to the underlying land parcel.

### ***Referral of claims to Court***

In cases where the HPCC dismissed a claim but found that it raised issues which were outside its jurisdiction, it referred this aspect of the claim to the competent local court pursuant to its authority under sections 2.5 of UNMIK Regulation 1999/23 and 22.1 of UNMIK Regulation 2000/60.<sup>226</sup>

Further, in cases where there was an apparent forgery of documents, the HPCC on deciding the claim also directed that the issue should be referred to the Office of the Public Prosecutor for further investigation.

---

<sup>226</sup> Issues commonly raised in claims which were outside the HPCC's jurisdiction included where the claimant pleaded a breach of contractual terms and sought the cancellation of the contract or revision of the sale agreement. Where the HPCC ordered that a claim be referred to the competent local court, the HPD made arrangements to hand over the claim file to the court so as to facilitate the claimant in having the matter which fell outside the HPCC's jurisdiction determined by the appropriate court. The HPCC directed that there would be no follow-up or legal assistance required of either the HPD or itself, save where was a specific request for assistance from the local courts and the HPD and HPCC had resources and jurisdiction to deal with the issue.



## 6. Correction of Administrative Errors in the Decision Making Process

In situations where so many claims are processed in a short period of time it is inevitable that errors occur. The HPCC issued resolutions in order to correct administrative errors or omissions and procedural defects which emerged, primarily after the adjudication of claims.

The following are the main scenarios in which Resolutions were passed in order to correct errors:

- where competing claims over one and the same property had been adjudicated in isolation from each other;<sup>227</sup>
- where it was discovered that a party affected by a claim which had been decided by the HPCC had not been notified of the claim before the decision was taken;
- where the claim which had been correctly categorized at the claim intake but was subsequently prepared and processed incorrectly as a different category of claim;
- where the claim had been processed in error as a summary procedure, uncontested claim with a recommendation to the HPCC that it be granted in circumstances where the evidence on the file was to the contrary and the claim should have been processed as a dismissal;
- where the relief sought by the claimant in his or her claim had not been considered in the decision making process;
- where a claim was, after an original decision, erroneously submitted to the HPCC and decided again in circumstances where the HPCC was *functus officio* and the matters raised therein were *res judicata*.

In such cases the HPCC, after giving the affected parties notice and an opportunity to object, issued a Resolution which overturned its decision and referred the claim back to the HPD for additional investigation, processing and resubmission in accordance with the correct procedure to the HPCC for adjudication. In the case of competing claims, where one claim had been decided in isolation from other, the Resolution directed that the claims were both to be processed and presented together for adjudication by the HPCC.

---

<sup>227</sup> As the HPCC had commenced adjudicating claims before the final date for claim intake this resulted in some claims being decided in isolation from other filed over the same property.

## CHAPTER 8

### SERVICE AND IMPLEMENTATION OF HPCC DECISIONS

#### 1. Service of Decisions

A certified copy of the HPCC's cover decision and the Registrar's individualized decision were served on the claimant, the respondent and other interested parties in Albanian, English and Serbian. In order to effect service, the HPD's Outreach Unit contacted the parties and informed them of the outcome of the HPCC's decision and made arrangements for the collection of the decision at one of the HPD's regional offices. Due to logistical reasons decisions were not delivered by post.

Where the respondent or occupant of the claimed property did not participate in the proceedings, a certified copy of the HPCC's cover decision and the individualized decision were served on the claimed property in order to ensure that all interested parties were notified of the decision.<sup>228</sup>

The HPD delivered some 23,146 decisions to claimants. In some 1,545 cases, decisions could not be delivered as the claimants could not be contacted or traced.<sup>229</sup> In another 2,546 cases, the HPD successfully notified claimants about their decision but they failed to collect the decision, most likely due to the fact that they had either disposed of their property and no longer had an interest in the proceedings, or because the property was destroyed.

#### 2. Publication of Decisions

The Registrar was under a statutory duty to publish HPCC decisions.<sup>230</sup> A list of claims (by DS number) in which decisions had been granted, was published on the HPD's website and this list was updated after HPCC Sessions. The decisions were available at all HPD offices and from July 2005 were available on the HPD's website, in all three languages.<sup>231</sup>

---

<sup>228</sup> A form known as a 'receipt form' was prepared containing the DS number of the file and the respondent's or occupant's details. The receipt, together with a copy map of the property, were stapled to the envelope which was served on the current occupant or respondent by the HPD's process server. Where the respondent or occupant sought to evade service, this fact was noted on the receipt which was signed by the process server and placed on the claim file.

<sup>229</sup> In the majority of such cases the claimants had moved residence and had failed to notify the HPD of their change of address or contact details. Notices to missing claimants were widely published by the HPD through Media Campaigns and public announcements throughout its years of operation.

<sup>230</sup> See section 22.11 of UNMIK Regulation 2000/60.

<sup>231</sup> Decisions were available at [www.hodkosovo.org](http://www.hodkosovo.org). From August 2004 an interactive search engine on the HPD's website enabled a claimant to ascertain the status of his or her claim, i.e. whether it had been decided or not.

### 3. Procedure for Implementation of Decisions

In recognition of the fact that a decision recognising a property right on its own was not sufficient in a post conflict society to restore possession of property to claimants, the restitution programme was explicitly conferred with power to fully enforce and ensure compliance with legally binding decisions. The process also presented claimants with a number of options for the implementation of their decision. In order to deal with the problem of illegal occupation of properties, the HPD was authorized to enforce HPCC decisions through issuing and executing eviction orders.<sup>232</sup>

Successful claimants who received decisions in category B cases and received a decision from the HPD/HPCC ordering their ownership to be registered in the appropriate public record were facilitated by the HPD in registering their property right.<sup>233</sup> In this regard the HPD reached a joint understanding with the Kosovo Cadastre Agency (the “KCA”) which was responsible for registering ownership in the public property records. Pursuant to the joint understanding the KCA undertook to register all HPCC decisions on receiving a certified copy of the HPD/HPCC Order, together with a written request for registration from both the HPD and the claimant. All claimants who received B-Orders were informed about the requirement to submit a written request to the KCA at the time when the Order was served on them. The HPD has forwarded certified copies of all B-Orders to the KCA.

Claimants who received positive decisions in category A and C cases ordering restoration of their property right were entitled to choose between three options for the implementation of their decision. They could request repossession of the claimed property and on receipt of such a request the HPD made arrangements for the handover of the property to the claimant. Alternatively, and in recognition of the fact that not all successful claimants wished to return to their properties at the time of receiving their decision, it was also open to the claimant to request the HPD to place the claimed property under its temporary administration.

The third option was closure of the claims file which was mainly chosen by claimants who had found their own solutions and no longer required any assistance from the HPD in relation to their property, e.g. where the claimants had sold or otherwise voluntarily disposed of their property.<sup>234</sup>

Administration and repossession are considered in detail below. As the method of enforcement in cases where the HPCC ordered restoration or repossession of property

---

<sup>232</sup> Section 13 of UNMIK Regulation 2000/60 authorized the HPD to evict illegal occupants and the procedure for the execution of eviction orders is considered further on in this chapter.

<sup>233</sup> This matter fell within the remit of the Kosovo Cadastre Agency (KCA) pursuant to section 3.7 of UNMIK Regulation 2000/22. The joint understanding was reached between the KCA and the HPD in May 2005.

<sup>234</sup> On receipt of a request for closure the Registrar drafted a Memo which stated that the claimant had requested closure, and both the request and the Memo were sent together with the claims file for archiving.

rights depended on the claimant's choice for implementation of the decision, the HPD did not undertake enforcement actions until the claimant requested such action.<sup>235</sup>

### ***Administration***

On receipt of a written request to place property under administration<sup>236</sup> the HPD was authorized to take possession of the property until the claimant requested repossession<sup>237</sup> and to utilize the property on a temporary basis for humanitarian housing purposes.<sup>238</sup> The legal framework which governed the management of property placed under HPD-Administration was set down in section 12 of UNMIK Regulation 2000/60 and in internal procedures which were adopted by the HPD for the implementation of this aspect of its mandate.<sup>239</sup> Pursuant to section 12 the HPD could grant temporary permits permitting persons in need of humanitarian housing the right to occupy property subject to such terms and conditions as it deemed fit.<sup>240</sup> Temporary permits were granted for a limited period of time and could be renewed on application.<sup>241</sup> For as long as the property was under administration, the claimant's right to take possession of the property was suspended<sup>242</sup> but it was open to him or her to request repossession at any time.<sup>243</sup> On receipt of a request for repossession the HPD delivered an eviction order requesting the temporary permit holder to vacate the property within ninety (90) days, and that failure to comply with this request would result in their eviction.<sup>244</sup> Where the latter failed comply with the notice the HPD issued a warrant authorizing the execution of the eviction order.<sup>245</sup> Administration of the property terminated once the claimant took repossession of the property.<sup>246</sup>

---

<sup>235</sup> In the period up to 2003, it was not necessary for a claimant to request implementation of his or her decision; the HPD on receipt of the decision from the HPCC implemented the decision. This led to practical difficulties where the HPD secured repossession of a claimed property for a claimant and where that claimant did not wish to return to Kosovo to take possession of the property at that time. Such properties were in many cases immediately reoccupied, looted or even destroyed. This led in 2003 to the introduction of a procedure whereby a claimant, on receiving of a decision from the HPCC, had to request implementation of the decision. Further, the claimant could choose from three options for implementation of the decision, namely repossession of the property, placing of the property under HPD-Administration or closure of the claims file.

<sup>236</sup> A request form was provided by the HPD to the claimant at the time when the claimant was served with the HPCC decision.

<sup>237</sup> See section 12.2(b) of UNMIK Regulation 2000/60.

<sup>238</sup> See section 1.1(b) of UNMIK Regulation 1999/23 and section 12.1 of UNMIK Regulation 2000/60.

<sup>239</sup> Section 12.5 of UNMIK Regulation 2000/60 prescribed that the HPD shall "*establish criteria for the allocation of properties under administration on a temporary humanitarian basis*".

<sup>240</sup> See section 12.4 of UNMIK Regulation 2000/60.

<sup>241</sup> See section 12.4 of UNMIK Regulation 2000/60.

<sup>242</sup> See section 12.3 of UNMIK Regulation 2000/60.

<sup>243</sup> See section 12.7 of UNMIK Regulation 2000/60.

<sup>244</sup> See section 12.7 of UNMIK Regulation 2000/60.

<sup>245</sup> See section 12.7 of UNMIK Regulation 2000/60.

<sup>246</sup> See section 12.7 of UNMIK Regulation 2000/60.

### ***Rental Scheme for Properties under Administration***

Section 1.1(b) of UNMIK Regulation 1999/23 prescribed for a rental scheme to be put in place for properties under administration. Rental money from property placed under administration was required to be lodged in a separate account on trust for the rightful owner, subject to a deduction of relevant expenses. Such a rental scheme was proposed throughout the HPD's years of operations and proposals on the design of such a scheme were put forward. However due to the politically sensitive nature of this matter the scheme only received the approval of the SRSG in April 2006, subsequent to the HPD having been subsumed into the Kosovo Property Agency. The implementation of the scheme was also conditional on receiving the explicit consent of the PISG which was granted in August 2006.

The scheme became operational in October 2006. Under the scheme the KPA entered into a rent agreement with the occupant as the tenant, and collected rent on a monthly basis. Where the rent was not paid the KPA, following compliance with notice procedures, evicted the tenant. The KPA charged an initial once off deposit to the tenant on signing the rent agreement which covered potential unpaid rent and damages to the property. The remaining portion of the deposit was returned to the tenant when the rent agreement ended and after the property was inspected. The rent rate was fixed by the KPA on the basis of the applicable taxable value of the property (as stipulated by the public authorities and was therefore non negotiable) and the physical condition and depreciation of the property were also taken into account.

As at the time of writing, the scheme was available to all properties under administration and the PISG was carrying out an advertising campaign to promote public awareness of the scheme and assist in identifying tenants for the available properties. As at June 2007, some 2,435 property right holders had opted to include their property in the scheme. Some 111 evictions have also been carried out against tenants who have failed to pay rent.

The scheme provides legal and physical protection for abandoned residential properties and ensures a minimum income source from the property for displaced property right holders, who otherwise might feel that they have no option but to sell their homes.<sup>247</sup>

### ***Repossession***

Repossession was an option for claimants who wished to take possession of their homes on receiving their decision from the HPCC. On receipt of a written request for repossession the HPD secured vacant possession of the property and handed it over to the claimant.

---

<sup>247</sup> Statistics on the rental scheme are available at [www.kpaonline.org](http://www.kpaonline.org)

### ***Processing Requests for Administration and Repossession***

In processing requests for repossession or administration, officers from the HPD's Regional Office firstly visited the property in order to determine the condition of the property and whether it was occupied. Where a property had been damaged and was no longer habitable it could not be placed under administration. In cases where property had been destroyed repossession was no longer an option and it was only possible for the HPD to secure repossession over what ever remained of the structure of the property and the land parcel on which it stood.

Where the property was found to be habitable and unoccupied, in cases where the claimant requested administration, the property was sealed and was officially placed under administration. Where repossession had been requested, the HPD secured repossession of the property to the claimant and made arrangements with him or her for the handover of the keys.

Where a property was found to be illegally occupied, a copy of the HPCC decision was served on the occupant, ordering him or her to vacate the property within thirty (30) days or failing this that he or she would be evicted.<sup>248</sup>

In order to ensure fairness of procedures, it was open to an occupant in such cases to file a request for reconsideration of the decision within thirty (30) days of receiving the decision or to file a request for humanitarian housing. The filing of a reconsideration request automatically stayed the execution of an eviction order until the HPCC decided on the request, unless it ordered otherwise.<sup>249</sup>

Requests for humanitarian housing were required to be filed within fourteen (14) days of receipt of the decision.<sup>250</sup> In cases where the claimant requested administration and the HPD found that the occupant's request for housing assistance was well founded, such that he or she had demonstrated genuine need,<sup>251</sup> it could on taking the property under its administration, grant the occupant a temporary permit to reside there.<sup>252</sup> In cases where the claimant had requested repossession, the provision of humanitarian housing for the occupant was subject not only to eligibility criteria, but also to the availability of suitable alternative properties, as to provide otherwise in such cases would have effectively constituted a *de facto* obstacle to restitution.

---

<sup>248</sup> See section 13.2 of UNMIK Regulation 2000/60.

<sup>249</sup> See section 14.3 of UNMIK Regulation 2000/60. Reconsideration requests are considered in Chapter 8 of this report. The HPCC never ordered the execution of an eviction order where a reconsideration request was pending.

<sup>250</sup> The fourteen (14) day period allowed for the processing of the application before the expiry of the thirty (30) days. Where the HPD found that the occupant's request for housing assistance was well founded, and in line with its internal criteria for granting housing assistance, it could on taking the property under its administration, grant a temporary permit to occupy the property pursuant to the provisions of section 12 of UNMIK Regulation 2000/60. In cases where repossession was requested, an occupant who applied and qualified for humanitarian housing was reallocated an alternative available property already under HPD-administration.

<sup>251</sup> This was in line with its internal criteria for granting housing assistance.

<sup>252</sup> See section 12 of UNMIK Regulation 2000/60.

While the HPD was conferred with a discretion under Regulation 2000/60 to delay the execution of an eviction order for up to 6 months, pending the resolution of the housing needs of the occupant, or under such circumstances as it deemed fit, this was a discretion which was utilized sparingly as it ran counter to the rights of the lawful property right holder to repossession and enjoyment of his or her property rights.<sup>253</sup>

### ***The Execution of Eviction Orders***

Where an occupant failed to vacate the property and did not request humanitarian housing or reconsideration of the HPCC decision, or where such requests were subsequently rejected, the eviction Order was enforced and a warrant authorizing its execution was issued by the Registrar setting out the following details:

- (i) the number and date of the HPCC decision ordering the eviction;
- (ii) the claim number;
- (iii) the warrant number;
- (iv) the names of the parties to the claim;
- (v) the address of the property;
- (vi) the date the decision was delivered to the party to be evicted;
- (vii) the date of issue;
- (viii) the signature of the Registrar;
- (ix) the stamp of the HPCC; and
- (x) a section for signature and a note of steps taken pursuant to the warrant by the executing official.<sup>254</sup>

The HPD was required to notify the claimants of the exact date for the eviction and make arrangement for the handover of keys to the property.<sup>255</sup> Decisions were enforced and evictions were carried out by HPD officers with the support of the law enforcement authorities.<sup>256</sup>

---

<sup>253</sup> See section 13.2 of UNMIK Regulation 2000/60. In practice a delay was only permissible in cases where the occupant's own property was also illegally occupied and he or she had filed a claim with the HPD which was still pending. In such cases the eviction was stayed pending the availability of suitable alternative accommodation, and without prejudice to the outcome of the claim.

<sup>254</sup> A warrant was issued pursuant to section 13.2 of UNMIK Regulation 2000/60 and note Section 6 of the HPCC's Additional Rules attached at Annex III which elaborated on the procedure for enforcing eviction orders.

<sup>255</sup> See section 13.6 of UNMIK Regulation 2000/60.

<sup>256</sup> See section 13.4 of UNMIK Regulation 2000/60. Initially support was provided by international police officers (UNMIK Police) and the NATO led military presence (KFOR), but this responsibility was gradually and successfully transferred to the local Kosovo Police Service (the "KPS") under the direction of UNMIK police. The latter ensured that the KPS reliably assisted in carrying out evictions, and took legally appropriate actions against those who sought to obstruct or prevent lawful evictions, regardless of ethnicity or political considerations.

During the execution of an eviction order HPD officers were required to be in possession of the signed eviction warrant authorizing the execution of the order.<sup>257</sup> An eviction order was executable against any party occupying the property at the time of the eviction<sup>258</sup> and during an eviction, any party who failed to comply with an instruction issued by HPD officers requesting him or her to leave the premises could be removed by the law enforcement authorities.<sup>259</sup> Following an eviction, the property was sealed<sup>260</sup> and arrangements were made to place the property under administration or secure repossession in accordance with the claimant's request for implementation of the decision. A similar procedure was followed for evictions carried out in favour of claimants who originally opted to place property under HPD-administration and subsequently requested repossession of the property, where a temporary permit holder failed to vacate the property and comply with the statutory notice period.<sup>261</sup>

### **Statistics on Implementation**

Some 28,716 residential property claims have been successfully implemented (98.5%), Some 5,080 claimants opted for repossession of their property while 3,419 requested the HPD to place their property under its administration. Another 2,207 requested closure of their claim on receiving their HPCC decision.

Concerns about security and the political environment as well as ongoing status negotiations, appear to have significantly affected the position of minority communities and influenced their choice of the form of implementation of their decision. It would appear to have brought about a "wait-and-see" attitude on the part of many displaced persons<sup>262</sup> as the overall number of claimants requesting administration was high, when compared with those returning to take physical repossession of their homes in Kosovo.

Whilst falling outside of its remit, the HPCC is concerned that in many areas claimants perceive that they are not yet able to return and resume occupation of properties restored to them by the HPCC.

In relation to the implementation of the compensation provisions provided for under

---

<sup>257</sup> See section 13.4 of UNMIK Regulation 2000/60.

<sup>258</sup> See section 13.3 of UNMIK Regulation 2000/60.

<sup>259</sup> See section 13.5 of UNMIK Regulation 2000/60.

<sup>260</sup> The Enforcement Unit took photographs of the claimed property, recorded its grid number using GPS technology and prepared a report setting out the condition of the property.

<sup>261</sup> Note however that section 12.7 of UNMIK Regulation 2000/60 governed the procedure to be applied where a claimant requested repossession of his or her property which was under HPD administration.

<sup>262</sup> See UNHCR's updated Position on the continued international protection needs of individuals from Kosovo, June 2006. See also the European Commission, Kosovo (under UNSCR 1244) 2005 Progress Report, Brussels, 9 November 2005, SEC (2005) 1423, section 1.2 Minority Rights; the Report of the European Agency for Reconstruction (the 'EAR') entitled 'Assessment of Communities and Returns Situation in Kosovo' February 2006. Note also the Secretary-Generals Report to the Security Council in January 2006, November 2006, and March 2007, S/2007/134 which also bears this out.



section 4 of UNMIK Regulation 2000/60<sup>263</sup> special attention has been given to putting in place legislation and procedures to implement section 4. In August 2005 the HPD/HPCC drafted the necessary legislation to implement the compensation scheme. Approval for its implementation came with the promulgation of UNMIK Regulation 2006/50 on the Resolution of Claims relating to Private Immovable Property, including Agricultural and Commercial Property in October 2006 which was required to be carried out under the auspices of the Kosovo Property Agency. Section 19 of the Regulation prescribes that the scheme shall be implemented *“in accordance with criteria and procedures adopted by the Kosovo Property Agency for the calculation of the amounts referred to in Section 4 of UNMIK Regulation 2000/60.”* Some 258 claims are pending implementation under section 4 of UNMIK Regulation 2000/60 and the HPD is currently finalizing procedures to implement the scheme.

---

<sup>263</sup> Considered in detail in Chapter 6 of this Report.

## CHAPTER 9

### RECONSIDERATION REQUESTS

#### 1. Procedure and Grounds for filing Reconsideration Requests

Section 2.6 of UNMIK Regulation 1999/23 required that the rules of evidence and procedure of the HPCC provide for a review or reconsideration of its decisions. In line with this statutory requirement, section 14 of UNMIK Regulation 2000/60 provided for reconsideration of decisions upon the presentation of legally relevant evidence not considered by the HPCC in initially deciding the claim, or where there was a material error in the application of the provisions of the Regulation.<sup>264</sup> Rule 5 of the HPCC's Additional Rules also laid down the procedure for processing such requests.

A reconsideration request could be filed by a party to the proceedings, or any other interested party who alleged a legal interest in the claimed property and could show good cause as to why he or she did not participate in the first instance proceedings.<sup>265</sup> While only natural persons could file claims with the HPD, it was open to legal persons to file a request for reconsideration; the HPCC held that the reference in section 14.2 of the Regulation to “*any interested person*” included both natural and legal persons.<sup>266</sup>

A party to the claim was required to submit a request for reconsideration of a HPCC decision within thirty (30) days from the date of being notified of the decision.<sup>267</sup> An interested person, who was not a party to a claim, was required to submit a request within thirty (30) days of learning of the decision, but no later than one year from the date of the decision.<sup>268</sup> However, reconsideration requests submitted outside the statutory time period could be admitted where the HPCC found that there was good reason to do so and it did not materially prejudice the rights of any party. Authorization for adopting such an approach was to be found in section 19.6 of UNMIK Regulation 2000/60 which prescribed that:

*“The Commission may, in specific cases, proceed notwithstanding non-compliance with any procedural rule by any Party or by the Directorate in the*

---

<sup>264</sup> Reconsideration requests were required to be filed in writing and to set out:

- (i) details of the person requesting reconsideration of the HPCC decision and other interested parties;
- (ii) details of the property concerned;
- (iii) the grounds for the request;
- (iv) the evidence which was not considered by the HPCC;
- (v) the reasons why the evidence had not been presented to the HPCC, in the case of a request referred to in section 14(1)(a) of UNMIK Regulation 2000/60; or
- (vi) the grounds on which it was alleged that the HPCC had erred, in the case of a request referred to in section 14(1)(b) of UNMIK Regulation 2000/60.

<sup>265</sup> See section 14 of UNMIK Regulation 2000/60.

<sup>266</sup> As per the HPCC decisions, HPCC/REC/43/2005 at para. 5(j) and HPCC/REC/53/2005 at para. 3.

<sup>267</sup> See section 14.1 of UNMIK Regulation 2000/60.

<sup>268</sup> See section 14.2 of UNMIK Regulation 2000/60.

*interests of the efficient administration of justice, where there is good reason to do so and this would not materially prejudice the rights of any party.”*

The HPCC admitted late requests which raised substantive legal issues, given that the reconsideration procedure represented the final opportunity for a party to participate in the process and challenge a decision. Where however a late reconsideration request was filed by party who had been notified of the first instance proceedings, and had chosen not to participate in the proceedings, and failed to set out reasons for his or her non-participation, the request was dismissed where the HPCC considered that there was no good reason within the meaning of section 19.6 of the Regulation to consider it.

The filing of a reconsideration request stayed the execution of any pending eviction order from the time of filing the request until it was decided, unless the HPCC decided otherwise.<sup>269</sup>

## **2. Processing Reconsideration Requests**

Once the HPD received a request for reconsideration of a decision it was registered and referred for processing. Requests were in all cases processed by different lawyers from those who had processed the claim at first instance. The HPCC emphasized the importance of this approach so as to guarantee the impartiality and fairness of proceedings, given that there was no opportunity to have a decision on a reconsideration request further reviewed or appealed.

Requests for reconsideration were batched into the following categories for processing:

- (i) Reconsideration requests with merit, i.e. those in which the requesting party submitted evidence which had the potential to change the outcome of the HPCC's initial decision;
- (ii) Reconsideration requests without merit, i.e. those in which additional documents or legal arguments submitted by the requesting party were irrelevant to the claim and would not change the outcome of the HPCC's decision;
- (iii) Reconsideration requests which were manifestly without merit, i.e. those in which the request was not grounded on additional legal arguments or evidence;
- (iv) Second or further reconsideration requests submitted in conflict with the provision that the HPCC's decision on the first reconsideration request is final and binding.<sup>270</sup>

Reconsideration requests falling into categories (i) and (ii) were processed and referred to the HPCC for a decision.

---

<sup>269</sup> See section 14.3 of UNMIK Regulation 2000/60. The HPCC never decided otherwise.

<sup>270</sup> Detailed instructions on the processing of requests were provided by the HPCC in its instructions to the HPD, in particular in HPCC Instructions, 28<sup>th</sup> Session, February 2005. See also section 5 of the HPCC's Additional Rules attached at Annex III.

A reconsideration request was not manifestly without merit where the requesting party submitted new documents relating to the claim or the claimed property or made a legal argument relating to the claim; in such cases the request fell into either categories (i) or (ii). In cases of doubt, the HPCC directed that the HPD was to consult with the national Commissioner who was delegated with authority to advise on such matters.<sup>271</sup>

In relation to requests which fell within category (iv) the request was rejected by letter issued and signed by the Executive Director of the HPD.<sup>272</sup> The only exceptions were where it was found that there had been an error by the HPD in processing the claim, in which event the first reconsideration decision was set aside by resolution.

Where a claimant sought reconsideration of a HPCC decision dismissing a claim on the basis that the documents relied upon were not genuine, the documents had to be represented for additional verification.

In order to ensure compliance with due process and fairness of procedures in processing reconsideration requests, where the requesting party submitted evidence which had not been considered by the HPCC when it initially decided the case, the other party to the claim was notified about this fact. The HPCC's legal instructions for the processing of reconsideration requests required that he or she be furnished with a copy of the request and any documents submitted to support it, and afforded the opportunity to respond by way of written submissions and the production of further documentary evidence.<sup>273</sup>

Once the investigation of the request had been completed, legal submissions together with conclusions and recommendations on the merits of the request were prepared in a document known as a "Reconsideration Request Claims Processing Report". This report together with a copy of the original report referring the claim to the HPCC, the first instance decision on the claim and the parties submissions and evidence were referred to the HPCC for a decision.

### **3. Number and Nature of Reconsideration Requests filed with the HPD**

The HPD received a total of 4,474 requests for reconsideration of HPCC decisions. As at the time of writing the HPCC had decided all of these requests, of which 1,069 (23.90%) were granted and 3,405 (76.10%) were rejected. The number of requests granted amounted to 0.42% of all decisions issued by the HPCC.

In the vast majority of cases the requesting party did not present legally relevant evidence which had not been considered by the HPCC when it initially decided the claim, nor was there any demonstration of a material error in the application of the Regulation. The majority of requests were based on the requesting parties' own personal circumstances, or on other grounds which were held by the HPCC to be irrelevant to a determination of the

---

<sup>271</sup> HPCC Instructions, 27<sup>th</sup> Session, December 2004.

<sup>272</sup> Some 439 requests were dismissed by the Executive Director of the HPD.

<sup>273</sup> HPCC Instructions, 36<sup>th</sup> Session, July 2006 and 37<sup>th</sup> Session, September 2006.

property dispute. A number of requests were dismissed where new evidence was submitted by a party which had not been considered by the HPCC at first instance, but was found not to alter the correctness of its earlier findings in relation to the claim. Reconsideration requests were also dismissed where the evidence on which the request was grounded was found not to be *prima facie* genuine and thus lacked evidentiary value.

In relation to the submission of legally relevant evidence which was not considered by the HPCC in deciding the claim, the HPCC in interpreting section 14.1(a) of UNMIK Regulation 2000/60 held that the evidence submitted must have existed or must have related to events that had taken place at the time of the HPCC's initial decision. In relation to evidence relating to events that took place thereafter, the HPCC held that while such evidence could affect the execution of the decision, it did not constitute new evidence not considered by it in deciding the claim, and therefore could not form a basis for overturning its earlier decision.

It was open to the HPCC to either grant the request or reject it and confirm its earlier decision.<sup>274</sup> It could also refer any issue arising out of or in connection with a request, which was not within its jurisdiction to the court pursuant to 22.1 of UNMIK Regulation 2000/60.

The issuing and service of decisions on reconsideration requests followed a similar procedure as that which applied to first instance decisions. The HPCC was authorized to issue Cover Decisions in respect of high numbers of requests and the Registrar thereafter prepared an individualized decision in respect of each reconsideration request. The Cover Decision and the individualized decision were thereafter served on the parties.<sup>275</sup>

---

<sup>274</sup> See section 25.2 of UNMIK Regulation 2000/60.

<sup>275</sup> The procedures which applied to the service of HPCC decisions on reconsideration requests was similar to that which applied to the service of its first instance decisions, considered previously in Chapter 8 of this Report.

## **CHAPTER 10**

### **CONCLUDING REMARKS**

The HPCC has effectively implemented its mandate and resolved some 29,000 residential property claims. This accomplishment has assisted dispossessed property right holders gain repossession of their homes and it is hoped has contributed to peace building and post conflict rehabilitation in Kosovo.

The establishment of the HPCC evidences growing recognition of the fact that the resolution of property rights issues is a central component of peace building efforts and indispensable to economic revitalization and the stability of peace building. Most importantly it demonstrates a willingness on the part of the international community to engage actively to ensure that the restitution remedy is enforced as an integral part of post conflict reconstruction and rehabilitation.

The approach to the resolution of residential property issues in Kosovo has been successful. However a more comprehensive approach earlier on in the Mission on the basis of a clear institutional and policy framework for addressing all legitimate property issues would have ensured that other legitimate and urgent property rights challenges were also effectively addressed.

Tackling issues in the residential property sector as early as possible is in itself a key component of peace building. Unfortunately no comparable initiatives were taken early on to address other urgent property rights challenges, such as the resolution of disputes over non-residential properties. Happily this is now being addressed.

Adequate remedies ought to be provided on an equitable basis for all claimants who are able to establish a valid property right. In cases of competing valid category A claims (discriminatory loss of occupancy right pre-1989) and category C claims (ownership rights or possession rights acquired post-1989) where the C claimant had less than an ownership right over the property, the property rights of category C claimants were subordinated to the rights of the pre-1989 occupancy right holders to restitution. Only those C claimants who had privatized their property right, having thereby acquired an ownership right over the property were entitled to compensation where restitution in kind was awarded to the A claimant. Thus property right holders with lesser rights lost out as pre-conflict occupancy rights trumped their rights.

The restitution regime also did not provide a remedy for category A claimants with less than perfected occupancy rights despite many having been in occupation for lengthy periods of time, having contributed to the construction of apartments and having lost possession as a result of discriminatory dismissal from their places of work. In such cases the category A claimant was non-suited and the right to repossession was recognized in favour of those category C claimants who enjoyed legal rights over the property prior to 24 March 1999. Category A claimants who had failed to complete all the steps necessary

to perfect an occupancy right still have to seek their remedy through the judicial system which is already overburdened and faced with backlogs and resource limitations.<sup>276</sup>

Monetary compensation would have been a solution in these cases, but to date, no comprehensive compensation scheme has been put in place. The HPCC highlighted this issue and proposed compensation as a remedy. It called on UNMIK to take the necessary steps by way of legislative amendment to address this issue. To date no such measures have been taken. If a scheme is devised, consideration should also be given to compensating those category C claimants who were unable to perfect their occupancy or lease rights because the apartments allocated to them were still under construction when the 1999 conflict started.

Another weakness of the HPD/HPCC process is that it failed to provide an adequate remedy for almost 11,000 claimants whose properties were found to have been destroyed. The HPCC did not have jurisdiction to award compensation for damage to or destruction of property. The only remedy the HPCC could provide was a decision known as a 'declaratory order' which recognized the claimant's property right over the property at the time of its destruction. A declaratory order could be used by a claimant in court proceedings to contest any subsequent illegal occupation of the land parcel on which the residential property stood or as evidence of the property right where the claimant sought to benefit from any future reconstruction project or compensation scheme. The process left claimants in such cases with no other option than to file claims for compensation in the local courts, an option which most have been unable to exercise. While reconstruction assistance was provided by various donors after 1999, many property right holders were not able to benefit from this assistance, because they were unable due to the security situation, to satisfy one of the essential requirements for such assistance, namely to return to Kosovo during the reconstruction process.<sup>277</sup> Further the amount of funding that would be required to reconstruct almost 11,000 homes far exceeds the funding that is at the time of writing available for reconstruction projects in Kosovo. The November 2006 Report of the Secretary-General to the Security Council stated that there was a funding shortfall of 20 million Euros affecting return projects.<sup>278</sup>

Future post-conflict property restitution regimes need to provide for compensation in cases where restitution in kind is no longer possible, whether due to the fact that certain property rights supersede or override others, or in cases where homes have been destroyed. This is essential to ensuring that the restitution process recognizes and protects the legitimately acquired property rights of all claimants and affords restitutional justice on an equitable basis to those who are found to have suffered property rights violations.

---

<sup>276</sup> As to the capacity of the courts generally in Kosovo, see further the OSCE Mission in Kosovo's periodic reports on the Justice System available at [www.oscmissioninkosovo.org](http://www.oscmissioninkosovo.org).

<sup>277</sup> As to funding of reconstruction projects see further the EAR Report, *op. cit.*, note 262 at page 31. Note also the EAR's Reconstruction Manual, available at <http://www.ear.europa.eu/kosovo/kosovo.htm>.

<sup>278</sup> S/2006/906, 20 November 2006 at page 5.

The Principles on Housing and Property Restitution for Refugees and Displaced Persons<sup>279</sup> recognize that secondary occupants of properties of refugees and displaced persons must also have their rights of due process respected and their own housing needs addressed. Whilst the processes of the HPCC and the HPD have recognized their rights of due process and have gone some way, through the implementation of the HPD's property administration mandate, towards providing temporary accommodation for such persons, there is doubtless much more that remains to be done in the provision of humanitarian and social accommodation in Kosovo.

Finally, Article 11(k) of UN Security Council Resolution 1244 (1999) envisages as one of the main responsibilities of the international civil presence that it assures the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo. Article 10 envisages the establishment of conditions for a peaceful and normal life for all inhabitants of Kosovo. There is much work still to be done in this regard. It is hoped that the work of the HPCC and the HPD has gone some way towards establishing the conditions where these goals might be achieved.

---

<sup>279</sup> Commission on Human Rights : Sub-Commission on the Promotion and Protection of Human Rights; final report of the Special Rapporteur, Paulo Sérgio Pinheiro submitted in accordance with Sub-Commission resolution 2004/2 : Principles on Housing & Property Restitution for Refugees and Displaced Persons E/CN.4/Sub.2/2005/\*\*.



## ANNEX I

### THE MEMBERS OF THE HOUSING AND PROPERTY CLAIMS COMMISSION

**Mr. Alan Dodson** (South Africa) was the Chairperson of the HPCC for the duration of its existence. He was conferred with a Bachelor of Commerce and LL.B. from the University of Natal and an LL.M. from the University of Cambridge. He was a practising attorney at the High Court of South Africa from 1985-1995 and a Judge of the Land Claims Court of South Africa from 1995-2000. He is a former Chairperson of the National Forests Advisory Council in South Africa. As an advocate at the High Court of South Africa since 2000, he specializes in property law, constitutional law and administrative law. He is an international expert on the resolution of property disputes in transitional societies and has contributed to publications on housing rights, property restitution, constitutional law and related themes.

**Mr. Veijo Heiskanen** (Finland) was an international member of the HPCC panel. He was a graduate of the University of Helsinki and Harvard Law School; he was conferred with his LL.M. in 1988 and S.J.D. in 1992. He specialized in international law; commercial arbitration law, trade law and internet law. Prior to his position with LALIVE Attorneys-at-Law in Geneva, he served as Secretary General and Senior Claims Judge of the Claims Resolution Tribunal for Dormant Accounts in Switzerland (2001-2002); Director of the Institute of International Economic Law of the University of Helsinki (1998-2000); Deputy Chief of the Legal Service of the UN Compensation Commission (1994-1998); and Legal Advisor with the Iran-US Claims Tribunal in the Hague (1990-1994). He lectured in various institutions, including at the University of Helsinki and the Hague Academy of International Law; has been a Visiting Scholar with the UN University in Tokyo (1999); he worked for the Arbitration Commission of the International Conference for the Former Yugoslavia (1993); and was also a member of the Steering Committee on International Mass Claims Processes at the Permanent Court of Arbitration. He is the author of numerous publications on international law; international arbitration and dispute settlements.

**Mr. Aqif Tuhina** (Kosovo) was the local member of the HPCC panel. He graduated in law in 1964 from the University of Belgrade. Prior to his current practice as an attorney at law, he served as a Judge in Kosovo at both the Labour Court and the Supreme Court before Kosovo lost its autonomy in 1989. More recently he worked for the Kosovo

Provincial Secretariat of Legislation and Administration and with UNMIK's Department of Judicial Affairs. He is a specialist in real property and criminal law.

## **ANNEX II**

### **UNMIK REGULATION 1999/23**

**15 November 1999**

#### **ON THE ESTABLISHMENT OF THE HOUSING AND PROPERTY DIRECTORATE AND THE HOUSING AND PROPERTY CLAIMS COMMISSION**

The Special Representative of the Secretary-General,  
Pursuant to the authority given to him under United Nations Security Council resolution 1244  
(1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK)  
Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in  
Kosovo,

For the purpose of achieving efficient and effective resolution of claims concerning  
residential property,

Hereby promulgates the following:

#### **Section 1**

##### **HOUSING AND PROPERTY DIRECTORATE**

1.1 The Housing and Property Directorate (the “Directorate”) shall provide overall  
direction on property rights in Kosovo until the Special Representative of the Secretary-  
General determines that local governmental institutions are able to carry out the functions  
entrusted to the Directorate. In particular, the Directorate shall:

- (a) Conduct an inventory of abandoned private, state and socially owned housing;
- (b) Supervise the utilization or rental of such abandoned property on a temporary basis  
for humanitarian purposes; rental monies of abandoned private and socially owned  
property shall be recorded in a separate account in trust for the rightful owner, subject  
to deduction of relevant expenses;
- (c) Provide guidance to UNMIK, including CIVPOL and UNHCR, as well as KFOR on  
specific issues related to property rights; and
- (d) Conduct research leading to recommended policies and legislation concerning  
property rights.

1.2 As an exception to the jurisdiction of the local courts, the Directorate shall receive  
and register the following categories of claims concerning residential property including  
associated property:

- (a) Claims by natural persons whose ownership, possession or occupancy rights to

residential real property have been revoked subsequent to 23 March 1989 on the basis of legislation which is discriminatory in its application or intent;

(b) Claims by natural persons who entered into informal transactions of residential real property on the basis of the free will of the parties subsequent to 23 March 1989;

(c) Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and who do not now enjoy possession of the property, and where the property has not voluntarily been transferred.

The Directorate shall refer these claims to the Housing and Property Claims Commission for resolution or, if appropriate, seek to mediate such disputes and, if not successful, refer them to the Housing and Property Claims Commission for resolution.

## Section 2

### **HOUSING AND PROPERTY CLAIMS COMMISSION**

2.1 The Housing and Property Claims Commission (the “Commission”) is an independent organ of the Directorate, which shall settle private non-commercial disputes concerning residential property referred to it by the Directorate until the Special Representative of the Secretary-General determines that local courts are able to carry out the functions entrusted to the Commission.

2.2 The Commission shall initially be composed of one Panel of two international and one local members, all of whom shall be experts in the field of housing and property law and competent to hold judicial office. The Special Representative of the Secretary-General shall appoint the members of the Panel and shall designate one member as the chairperson. The Special Representative of the Secretary-General may establish additional Panels of the Commission in consultation with the Commission.

2.3 Before taking office, the members of the Commission shall make in writing the following solemn declaration:

“I solemnly declare that I will perform my duties and exercise my power as a member of the Housing and Property Claims Commission honourably, faithfully, impartially and conscientiously.”

The declarations shall be put in the archives of the Commission.

2.4 The Commission shall be entitled to free access to any and all records in Kosovo relevant to the settlement of a dispute submitted to it.

2.5 As an exception to the jurisdiction of local courts, the Commission shall have exclusive jurisdiction to settle the categories of claims listed in section 1.2 of the present regulation. Nevertheless, the Commission may refer specific separate parts of such claims to the local courts or administrative organs, if the adjudication of those separate parts does not raise the issues listed in section 1.2. Pending investigation or resolution of a claim, the Commission may issue provisional measures of protection.

2.6 The Special Representative of the Secretary-General shall establish by regulation the Rules of Procedure and Evidence of the Commission, upon the recommendation of the Commission. Such rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards. In particular, such rules shall include provisions on reconsideration of decisions of the Commission.

2.7 Final decisions of the Commission are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo.

### Section 3

#### **EXECUTIVE DIRECTOR AND STAFF**

The Special Representative of the Secretary-General shall appoint an Executive Director of the Directorate after consultation with the Executive Director of the United Nations Centre for Human Settlements (UNCHS) (Habitat). The Executive Director shall appoint the staff of the Directorate, which shall comprise local experts, and shall allocate staff to the Commission who shall be under the exclusive control of the Commission.

### Section 4

#### **APPLICABLE LAW**

The provisions of the applicable laws relating to property rights shall apply subject to the provisions of the present regulation.

### Section 5

#### **ENTRY INTO FORCE**

The present regulation shall enter into force on 15 November 1999.

***Bernard Kouchner***  
***Special Representative of the Secretary-General***

# **UNMIK REGULATION 2000/60**

**31 October 2000**

## **ON RESIDENTIAL PROPERTY CLAIMS AND THE RULES OF PROCEDURE AND EVIDENCE OF THE HOUSING AND PROPERTY DIRECTORATE AND THE HOUSING AND PROPERTY CLAIMS COMMISSION**

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

Recalling UNMIK Regulation No. 1999/23 of 15 November 2000 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission, For the purpose of further elaborating the law relating to residential property in Kosovo, and establishing the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission,

Hereby promulgates the following:

### **Section 1 DEFINITIONS**

For the purposes of the present regulation:

“Abandoned housing” means any property, which the owner or lawful possessor and the members of his/her family household have permanently or temporarily, other than for an occasional absence, ceased to use and which is either vacant or illegally occupied.

“Allocation right holder” means the holder of the right of disposal of a socially owned apartment in accordance with the law that was applicable at the time.

“Associated property” means land and buildings owned or used by the claimant, which form a unit with a residential property.

“Commission” means the Housing and Property Claims Commission established under UNMIK Regulation No. 1999/23.

“Directorate” means the Housing and Property Directorate established under UNMIK Regulation No. 1999/23.

“Discrimination” means any distinction 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 effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of a property right.

“Informal transaction” means any real property transaction, which was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions (Official Gazette SRS 30/89, as amended by the laws published in Official Gazette SRS 42/89 and 22/91) or other discriminatory law, and which would otherwise have been a lawful transaction.

“Occupancy right” means a right of use of a socially owned apartment under a contract on use of the apartment made under the Law on Housing Relations<sup>1</sup> or the Law on Housing.<sup>2</sup> It does not include the right to use apartments for official purposes (‘service apartments’) or apartments used as temporary accommodation, or leases of socially owned apartments.

“Property” means any residential house or apartment, any socially owned apartment, and any associated property.

“Property right” means any right of ownership of, lawful possession of, right of use of or occupancy right to, property.

## **CHAPTER I: SUBSTANTIVE PROVISIONS**

### **Section 2**

#### **GENERAL PRINCIPLES**

2.1 Any property right which was validly acquired according to the law applicable at the time of its acquisition remains valid notwithstanding the change in the applicable law in Kosovo, except where the present regulation provides otherwise.

2.2 Any person whose property right was lost between 23 March 1989 and 24 March 1999 as a result of discrimination has a right to restitution in accordance with the present regulation. Restitution may take the form of restoration of the property right (hereafter “restitution in kind”) or compensation.

2.3 Any property transaction which took place between 23 March 1989 and 13 October 1999, which was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions (Official Gazette SRS 30/89, as amended by the laws published in Official Gazette SRS 42/89 and 22/91) or other discriminatory law, and which would otherwise have been a lawful transaction, is valid.

2.4 Any person who acquired the ownership of a property through an informal transaction based on the free will of the parties between 23 March 1989 and 13 October 1999 is entitled to an order from the Directorate or Commission for the registration of his/her ownership in the appropriate public record. Such an order does not affect any obligation to pay any tax or charge in connection with the property or the property transaction.

2.5 Any refugee or displaced person with a right to property has a right to return to the property, or to dispose of it in accordance with the law, subject to the present regulation.

2.6 Any person with a property right on 24 March 1999, who has lost possession of that property and has not voluntarily disposed of the property right, is entitled to an order from the Commission for repossession of the property. The Commission shall not receive claims for compensation for damage to or destruction of property.

### Section 3

#### **RESTITUTION OF PROPERTY LOST AS A RESULT OF DISCRIMINATION**

3.1 No claim for restitution of residential property lost between 23 March 1989 and 24 March 1999 as a result of discrimination may be made to any court or tribunal in Kosovo except in accordance with UNMIK Regulation No. 1999/23 and the present regulation.

3.2 A claim under section 1.2 (a), (b) or (c) of UNMIK Regulation No. 1999/23 must be submitted to the Directorate before 1 December 2001. The deadline for submission of claims may be extended by announcement of the Special Representative of the Secretary-General, who may:

(a) Decline to extend the deadline for a category of claims or for purposes of section 5.2; and

(b) Provide different deadlines for different categories of claims or for purposes of section 5.2.

3.3 Where a claimant is found by the Commission to be entitled to restitution, the Commission shall award restitution in kind unless the ownership of the property has been acquired by a natural person through a valid voluntary transaction for value before the date this regulation entered into force.

### Section 4

#### **RESTITUTION OF OCCUPANCY RIGHTS TO SOCIALLY OWNED APARTMENTS LOST AS A RESULT OF DISCRIMINATION**

4.1 This section applies to any occupancy right to a socially-owned apartment which was cancelled as a result of discrimination.

4.2 As an exception to section 3.3, in relation to a socially owned apartment which was subsequently purchased from the allocation right holder by the current owner under the Law on Housing (hereafter "First Owner"), the following rules shall apply:

(a) The claimant has a right to the ownership of the apartment upon payment to the Directorate of:

(i) The purchase price for the apartment contained in the contract of sale concluded by the First Owner; or

(ii) The price at which the claimant would have been entitled to purchase the apartment under the Law on Housing but for the discrimination (whichever is determined by the Directorate to be less), plus a percentage of the current market value of the apartment, as determined by the Directorate, and the cost



of any improvements made to the apartment by the First Owner.

(b) To exercise the right to restitution in kind, the claimant must pay the sum referred to in section 4.2(a) to the Directorate within 120 days of the Commission's decision on the right to restitution. Upon the claimant's application, the Directorate may extend the deadline by up to 120 days if not extending it would result in undue hardship to the claimant. Upon payment of this sum, the Commission shall issue a decision awarding ownership of the apartment to the claimant; and

(c) Money paid under section 4.2(b) will be held by the Directorate in a trust fund. A First Owner who loses the ownership of an apartment under this section will upon request be compensated by the Directorate from the trust fund for the amount s/he paid for the purchase of the apartment, a percentage of the current market value of the apartment, as determined by the Directorate, as well as for the cost of any improvements s/he made to the apartment. Any outstanding obligations of the First Owner under the Law on Housing are cancelled.

4.3 Except as provided in the previous section, no person whose rights are affected by a decision of the Commission awarding restitution in kind shall be entitled to any form of compensation.

4.4 Any claimant found by the Commission to have a right to restitution of a socially owned apartment, but who is not awarded restitution in kind in accordance with section 4.2, shall be issued a certificate by the Directorate stating the current market value of the apartment in its current condition, minus the amount which the claimant would have been required to pay for the purchase of the apartment under the Law on Housing. The Directorate shall establish formulae for determining these amounts and the amounts referred to in sections 4.2(a) and (c).

4.5 Any person with a certificate under section 4.4 shall be entitled to fair compensation proportionate to the amount stated in the certificate, to be paid from such funds as may be allocated in the Kosovo Consolidated Budget or any fund set up for this purpose under the present regulation. The method of calculation and payment of such compensation shall be established in subsequent legislation.

## Section 5

### **RESTRICTIONS ON DISPOSAL OF APARTMENTS PENDING RESTITUTION CLAIMS**

5.1 This section applies to any person who purchased an apartment from the allocation right holder in accordance with the Law on Housing, where neither that person nor a member of that person's family household was the occupancy right holder of the apartment before 23 March 1989.

5.2 Until the deadline referred to in section 3.2 of the present regulation, or until the resolution of any claim for the apartment made under the present regulation, whichever is the later, a person to whom this section applies shall be considered a lawful possessor of the apartment. During this period, the person may not transfer the apartment to any other person, except when the transfer is part of an amicable settlement of the claim through the agreement of the parties in accordance with section 10.1 of the present regulation. Any contract relating

to a sale, exchange or gift made in contravention of this section shall be null and void.

#### Section 6

##### **ALLOCATION AND USE OF SOCIALLY OWNED APARTMENTS**

With regard to the exclusive jurisdiction entrusted to the Directorate over the matters set out in section 1.2 of UNMIK Regulation No. 1999/23, the following provisions shall apply:

(a) Article 3 of the Law on Housing Relations is suspended by the present regulation;

(b) Notwithstanding the provisions of any other law, no occupancy right to a socially owned apartment may be terminated without:

(i) The consent of the occupancy right holder or the Housing and Property Directorate; or

(ii) An order of the Commission, as provided for in the present regulation; and

(c) Notwithstanding Article 24 of the Law on Housing Relations, leases of socially owned apartments are permitted.

## **CHAPTER II: RULES OF THE HOUSING AND PROPERTY DIRECTORATE**

#### Section 7

##### **REGISTRATION OF CLAIMS**

7.1 The Directorate shall register claims under section 1.2 of UNMIK Regulation No. 1999/23 at offices established for this purpose in Kosovo and in such other locations as it sees fit.

7.2 A claim may be made by a person referred to in section 1.2 of UNMIK Regulation No. 1999/23, or, where that person is unable to make a claim, by a member of the family household of that person. For the purposes of the present regulation, the members of the family household of a property right holder are determined in accordance with Article 9 of the Law on Housing Relations.

7.3 A claimant or a party to the claim may be represented by an authorized person with a valid and duly executed power of attorney. In exceptional cases, where the provision of a power of attorney is problematic the Directorate may certify an alternative document authorizing representation of a claimant.

#### Section 8

##### **CONTENT OF CLAIMS**

8.1 The claim shall be made in a form determined by the Directorate providing all necessary particulars of the claim, signed by the claimant or the authorized person in the presence of a responsible officer of the Directorate (hereafter "Claim Form").

8.2 The claimant must submit with the Claim Form the originals or certified copies of any documents relevant to the claim which are in his/her possession, or which s/he can reasonably obtain from a public record. The Directorate is authorized to certify copies.

8.3 For claims under section 1.2(c) of UNMIK Regulation No. 1999/23, the claimant may, in addition to any other order, seek an order:

(a) Restoring possession of the property for the purposes of returning to the property or disposing of it in accordance with the law; and

(b) Placing the property under the administration of the Directorate until such time as the claimant elects to return to the property or dispose of it.

## Section 9

### **THE RIGHTS OF PARTIES TO THE CLAIM**

9.1 After receipt of a claim, the Directorate will notify the current occupant of the claimed property if any, and shall make reasonable efforts to notify other persons with a legal interest in the property. In appropriate cases, such reasonable efforts shall take the form of an announcement in an official publication of the Directorate.

9.2 The parties to the claim shall be the claimant and:

(a) Any current occupant of the claimed property; and

(b) Any other natural person with a legal interest, who informs the Directorate of their intention to participate in the proceedings within 30 days of being notified of the claim by the Directorate in accordance with section 9.1. A person with a legal interest in the claim, who did not receive notification of a claim, may be admitted as a party at any point in the proceedings, provided the claim has not been finally adjudicated.

9.3 The current or former allocation right holder to a claimed apartment may make submissions or present evidence in connection with the claim. Anyone who makes submissions in their capacity as a representative of the current or former allocation right holder shall prove to the satisfaction of the Directorate their identity, and a connection to the allocation right holder. However, in no event is the Directorate or the Commission obliged to decide upon any legal question concerning the identity of the allocation right holder or the right to represent the allocation right holder.

9.4 In the notice of intention to participate referred to in section 9.2, the current occupant and any other natural person with a legal interest shall notify the Directorate of an address for delivery of documents. The Directorate shall deliver copies of the Claim Form to each party.

9.5 Within 30 days of receiving a copy of the Claim Form, the receiving party may respond to the claim in a form determined by the Directorate (hereafter "Reply to Claim"). Subject to section 21.1, each party must submit originals or certified copies of any documents relevant to the claim which are in his/her possession, or which s/he can reasonably obtain from a public record.

9.6 In the Reply to Claim, the current occupant may request that his/her housing needs be taken into consideration by the Directorate, and, if so, shall provide to the Directorate all information relevant to an assessment of his/her housing needs.

9.7 The Directorate shall deliver copies of the Reply to Claim to the other parties. In appropriate cases, the Directorate may provide the parties with summaries in the language of their choice of any document presented by another party. Any party may respond to any matter raised in the Reply to Claim within 30 days.

9.8 The Directorate may decline to disclose any information submitted to it by a party to the claim, including the identity of any party or witness, where necessary for the security of any person.

9.9 A Claim Form and a Reply to Claim may be submitted in Albanian, English or Serbian.

9.10 In the interests of the efficient and fair resolution of claims, the Directorate may, in specific cases, extend any deadline or dispense with any procedural rule in this Chapter, where there is good reason to do so and this would not materially prejudice the rights of any party. However, the failure of any party without proper justification to participate in the proceedings or comply with any rule shall not delay the resolution of the claim.

## Section 10

### **RESOLUTION OF CLAIMS**

10.1 The Directorate shall endeavour to settle claims amicably through the agreement of the parties. The Directorate shall inform the parties of their rights and obligations under the present regulation, and may take whatever steps it sees fit to facilitate settlements or to assist the parties to resolve their housing needs. The Directorate may develop standardised settlement agreements for use by the parties, and may certify settlement agreements.

10.2 The Directorate may investigate a claim, and obtain evidence relevant to a claim from any record held by a public body, corporate or natural person. The Directorate is entitled to free access without charge to any records in Kosovo relevant to the settlement of a claim or for any other verification purposes.

10.3 The Directorate may, by written decision, reject a claim if it manifestly falls outside the Commission's jurisdiction. A claim may be rejected at any stage of the proceedings before the Directorate.

10.4 The Directorate shall refer to the Commission any claim which cannot be settled amicably or in respect of which the claimant disputes the Directorate's rejection in terms of section 10.3. The Directorate may prepare summaries of submissions and evidence, translations of evidence, and recommendations for the consideration of the Commission.

10.5 The Directorate may at any time in the proceedings, either on the request of the claimant or on its own initiative, recommend that the Commission issues provisional measures of protection or any other directive or order necessary to secure the orderly and expeditious resolution of the claim.

## Section 11

### **UNCONTESTED CLAIMS TO REGISTER INFORMAL TRANSACTIONS**

11.1 For claims under section 1.2(b) of UNMIK Regulation No. 1999/23, the Directorate may issue an order for registration of the claimant's informal transaction in the appropriate public record if:

- (a) The claim is uncontested; and
- (b) The Directorate is satisfied that there is sufficient evidence that the claimant acquired the property right through an informal transaction between 23 March 1989 and 13 October 1999.

11.2 An order of the Directorate under this section is not a binding decision on property rights, and does not affect the right of any person to make a further claim to the Directorate under section 1.2 of UNMIK Regulation No. 1999/23. Such further claim must be made within 30 days of learning of the Directorate's order but not later than one (1) year from the date of the Directorate's order. The Directorate must publish orders made in terms of this section.

## Section 12

### **PROPERTIES UNDER THE ADMINISTRATION OF THE DIRECTORATE**

12.1 The Directorate is authorized to administer abandoned housing for the purpose of providing for the housing needs of displaced persons and refugees.

12.2 The Directorate may make an order placing a property under its administration in any of the following circumstances:

- (a) By agreement of the parties in settlement of a claim;
- (b) On the request of the claimant, following a decision by the Commission confirming the property right of the claimant;
- (c) Following eviction of the current occupant, if the claimant fails to repossess the property within 14 days of being notified of the execution of the eviction;
- (d) Where no claim has been submitted for the property, and the property is either vacant, or the current occupant of the property does not assert any property right to the property; or
- (e) Where no claim has been submitted for the property, on the request of the owner or occupancy right holder of the property.

12.3 For as long as a property is under the administration of the Directorate (hereafter "property under administration"), the rights of possession of the owner or occupancy right holder are suspended in the public interest.

12.4 The Directorate may grant temporary permits to occupy property under its administration, subject to such terms and conditions as it sees fit. Temporary permits shall be granted for a limited period of time, but may be renewed upon application.

12.5 The Directorate shall establish criteria for the allocation of properties under administration on a temporary humanitarian basis.

12.6 The Directorate may issue an eviction order in relation to a property under administration at any time in any of the following circumstances:

(a) Where the current occupant does not qualify for a temporary permit;

(b) Where a temporary permit has expired; or

(c) Where the holder of a temporary permit ceases to qualify for accommodation on humanitarian grounds or does not comply with the terms and conditions of the temporary permit.

12.7 The owner or occupancy right holder of a property under administration may give notice to the Directorate of his/her intention to return into possession of the property. Following a request from the owner or occupancy right holder, the Directorate will deliver an eviction order requiring the current occupant to vacate the property within 90 days, and if the current occupant does not voluntarily vacate the property, the Directorate will issue a warrant authorizing execution of the eviction order. The administration of the property by the Directorate terminates upon repossession of the property by the owner or occupancy right holder.

12.8 The Directorate shall make reasonable efforts to minimize the risk of damage to any property under its administration. The Directorate shall bear no responsibility for any damage to property under administration or loss of or damage to its contents.

## Section 13

### **EXECUTION OF DECISIONS AND EVICTION ORDERS**

13.1 The Directorate shall deliver a certified copy of a Commission decision and any order to each party at the address given in terms of section 9.4. The decision and any order are effective from the date of delivery to the last party, unless the decision or order provides otherwise.

13.2 The Directorate shall deliver an eviction order issued by the Commission to the current occupant of the claimed property. The Directorate may, at its discretion, delay execution of the eviction order for up to 6 months, pending resolution of the housing needs of the current occupant, or under circumstances that the Directorate deems fit. The Directorate shall inform the current occupant and the claimant of the reason for the delay.

13.3 Save for an eviction order in section 12.7 or an order by the Commission providing otherwise, an eviction order issued by the Commission, or in the case of property under its administration, by the Directorate, is executable 30 days after delivery. The eviction order may be executed against any person occupying the property at the time of the eviction.

13.4 An eviction shall be executed by the responsible officer of the Directorate, with the support of the law enforcement authorities. The said officer and authorities must be in possession of a warrant signed by:

(a) The Registrar, in the case of an order of the Commission; or

(b) A senior official of the Directorate, in the case of an order made by it, authorizing execution of the eviction order.

13.5 During the execution of an eviction order, any person who fails to obey an instruction of the responsible officer to leave the premises may be removed by the law enforcement authorities. In the event that movable property is also removed, the Directorate shall make reasonable efforts to minimize the risk of damage to or loss of such property. The Directorate shall bear no responsibility for any damage to or loss of removed property.

13.6 The Directorate shall notify the claimant of the scheduled date of the eviction. Following the execution of an eviction, if the claimant or temporary occupant is not present to take immediate possession of the property, the responsible officer shall seal the property, and notify the claimant. Any person who, without lawful excuse, enters a property by breaking a seal may be subject to removal from the property by the law enforcement authorities.

#### Section 14

##### **RECONSIDERATION REQUESTS OF COMMISSION DECISIONS**

14.1 Any party to a claim may submit to the Directorate a request to the Commission for the reconsideration of a Commission decision within 30 days of being notified of the decision:

(a) Upon the presentation of legally relevant evidence, which was not considered by the Commission in deciding the claim; or

(b) On the ground that there was a material error in the application of the present regulation.

14.2 Any interested person who was not a party to the claim, and who can show good cause why s/he did not participate as a party to the claim, may request reconsideration of a Commission decision within 30 days of learning of the Commission's decision but not later than one (1) year from the date of the Commission's decision.

14.3 The execution of a pending eviction order shall be stayed from the time of lodging of the reconsideration request until the Commission has decided on the reconsideration request, unless the Commission determines otherwise.

#### Section 15

##### **COOPERATION AND DELEGATION**

15.1 In the performance of any of its functions under the present regulation, the Directorate

may co-operate with and receive information from any intergovernmental, governmental or non-governmental entity.

15.2 The Directorate may delegate any of its functions to the responsible municipal service in one or more municipalities in Kosovo, subject to such supervision arrangements as it considers appropriate.

## Section 16

### **ADDITIONAL RULES**

The Directorate may adopt additional rules for carrying out its functions provided that they are consistent with the present regulation.

## **CHAPTER III: RULES OF PROCEDURE OF THE HOUSING AND PROPERTY CLAIMS COMMISSION**

## Section 17

### **GENERAL RULES OF THE COMMISSION**

17.1 The Commission shall sit in plenary session or in such Panels as are established under section 2.2 of UNMIK Regulation No. 1999/23. In the present regulation, once two or more Panels have been created, the terms “Commission” and “Chairperson” shall mean “Commission” and “Chairperson of the Commission” in relation to plenary sessions, and “Panel” and “Chairperson of the Panel” in relation to claims considered in Panels.

17.2 The Chairperson of the Commission shall be designated by the Special Representative of the Secretary-General from among members of the Commission. If the Chairperson of the Commission resigns, is removed or is not re-appointed, the longest-serving Panel Chairperson shall be the Acting Chairperson of the Commission pending the designation of the Chairperson by the Special Representative of the Secretary-General. For Panels established subsequent to the first Panel, the Chairperson shall be designated by the Chairperson of the Commission after consultation with the members of the Panel.

17.3 Members of the Commission shall be appointed by the Special Representative of the Secretary-General for an initial term of one year. They may be re-appointed for one or more additional terms.

17.4 A member of the Commission may be removed from office by the Special Representative of the Secretary-General on the recommendation of a majority of the members of the Commission for failure to meet the qualifications for office or for persistent and unjustified refusal to perform the duties of office.

17.5 A member of the Commission who intends to resign shall:

(a) Provide at least one month’s written notice to the Registrar and the chairperson of the plenary Commission;

(b) Continue to perform all his/her functions until the end of the notice period subject to section 17.5 (c); and



(c) Continue to serve after the end of the notice period for the limited purpose of finalising any claim or group of claims which is still pending before that member's Panel.

17.6 Without prejudice to any other law or regulation dealing with immunity, members of the Commission and staff members of the Commission and Directorate shall be immune from any criminal or civil proceedings for any acts carried out within the scope of their official duties.

17.7 The Registrar in consultation with the Chairperson of the Commission shall determine the number and date of its sessions.

17.8 The seat of the Commission shall be in Pristina. The Commission may decide to hold sessions elsewhere if it thinks fit. In appropriate cases, deliberations of the Commission may take place through electronic means.

17.9 The Chairperson of the Commission shall direct the work of the Commission and preside at its sessions.

17.10 The Commission shall elect a Vice-Chairperson who shall perform the functions of the Chairperson in the absence of the Chairperson.

17.11 Members of the Commission unable to participate in a session shall give written notice to the Registrar and the Chairperson at least two weeks before the session. The notice must provide the reasons for the inability to participate.

17.12 Members of the Commission serve only in their personal capacity. They shall not take part in any proceedings on a claim in which they have a personal interest, or if they have been consulted by or are associated with a party to the claim, or if they have been involved in any legal proceedings on the claim other than the proceedings before the Directorate and Commission, or if there are any other circumstances which may affect their impartiality. In case of any doubt concerning this paragraph, or in any other circumstance which might affect the impartiality of members in deciding a claim, the Chairperson shall decide or, in the event that the Chairperson's impartiality could be affected, the Vice-Chairperson shall decide.

17.13 The Registrar of the Commission shall be appointed by the Executive Director of the Directorate in consultation with the Chairperson. The Registrar and staff members of the Commission will provide administrative, technical and legal support to the Commission.

17.14 The Registrar, in consultation with the Chairperson of the plenary Commission, shall determine the order in which claims will be considered by the Commission, and shall allocate claims between the Panels, taking into account the desirability of developing a consistent practice.

17.15 The official languages of the Commission shall be Albanian, English and Serbian. The Chairperson may permit any member or person appearing before the Commission to speak in any other language.

17.16 Interpreters employed by the Directorate or the Commission in connection with

Commission proceedings shall make the following declaration:

“I solemnly declare that I will perform my duties as interpreter faithfully, impartially and conscientiously, and with full respect for the duty of confidentiality.”

#### Section 18

##### **PLENARY SESSIONS OF THE COMMISSION**

18.1 The Commission shall decide, in plenary session, on additional rules of procedure and evidence in accordance with section 26, and on such issues that may be referred to it in accordance with section 20.4.

18.2 Until such time as more than one Panel is established, the quorum for plenary sessions of the Commission shall be two members. Decisions shall be made in accordance with section 20.3.

18.3 Following the establishment of two or more Panels, the quorum for plenary sessions shall be a majority of the members of all Panels. Decisions shall normally be taken by consensus. If a consensus cannot be reached, a decision shall be taken by majority vote. In the event of a tied vote, the Chairperson of the Commission shall have the casting vote in addition to the vote to which each member is entitled.

#### Section 19

##### **PROCEEDINGS OF THE COMMISSION**

19.1 The Commission shall, subject to sections 19.2 and 19.3, decide claims on the basis of written submissions, including documentary evidence.

19.2 No party may give oral evidence or argument before the Commission unless invited to do so by the Commission. An oral hearing shall take place in public, with due notice to the parties, unless the Chairperson determines otherwise for reasons of the security of the parties or other special circumstance. Proceedings in an oral hearing shall be conducted under the direction of the Chairperson.

19.3 The Commission may consider written or oral submissions from any intergovernmental, governmental or non-governmental entity or expert witness on any matter relevant to a claim.

19.4 The Commission may appoint any one of its members to carry out any of its functions, including attending the hearing of oral evidence at any place, and to report back to the Commission.

19.5 The Commission may:

(a) Consider claims raising common legal and evidentiary issues together;

(b) Delegate to the Registrar and the staff members of the Directorate assigned to service the Commission certain claims review and evidentiary review functions, subject to the supervision of the Commission;

(c) Use computer databases, programs and other electronic tools in order to expedite its decision-making; and

(d) Take any other measures it considers appropriate to expedite its decision-making.

19.6 The Commission may, in specific cases, proceed notwithstanding non-compliance with any procedural rule by any Party or by the Directorate in the interests of the efficient administration of justice, where there is good reason to do so and this would not materially prejudice the rights of any party.

19.7 Prior to deciding a claim, the Commission may issue any interim order consistent with the present regulation, which it considers necessary for an orderly and expeditious resolution of the claim.

19.8 All proceedings before the Directorate and the Claims Commission, including the completion and submission of claim and reply to claim forms, are considered to be administrative proceedings for the purposes of section 176 of the Penal Law of Kosovo (Official Gazette of the SAPK no 20/77, 25/84 and 44/84) concerning false testimony.

## **Section 20**

### **PANELS**

20.1 Subject to sections 17.11, 17.12, 20.2 and 25.1, claims shall be adjudicated by a Panel.

20.2 The quorum for meetings of a Panel shall be two members.

20.3 Decisions of a Panel shall normally be taken by consensus. If all members of a Panel are present and a consensus cannot be reached, a decision shall be taken by majority vote. If two members of a Panel are present and a consensus cannot be reached, the Chairperson of the Panel shall defer consideration of the claim to the next session of the Panel.

20.4 A Panel or the Chairperson of a Panel may refer specific issues relating to a claim to the plenary session of the Commission for guidance. Decisions of a Panel to refer specific issues to the plenary session of the Commission shall be made in accordance with sections 20.2 and 20.3.

20.5 In deciding on a claim or on whether to refer specific issues relating to a claim to the plenary session of the Commission, members of a Panel may not abstain.

20.6 The Chairperson of the Commission may temporarily designate a member of a Panel to serve on a different Panel where s/he deems it necessary for the proper functioning of the Commission.

## **Section 21**

### **EVIDENCE**

21.1 The Commission may be guided but is not bound by the rules of evidence applied in local courts in Kosovo. The Commission may consider any reliable evidence, which it

considers relevant to the claim, including evidence presented by the Directorate concerning the reliability of any public record.

21.2 The Commission may require the Directorate to obtain more information from a party, or to conduct additional investigations.

## Section 22

### **DECISIONS OF THE COMMISSION**

22.1 The Commission may refer issues arising in connection with a claim, which are not within its jurisdiction to a competent local court or administrative board or tribunal.

22.2 A panel shall be bound by the principles established in:

(a) Its own decisions and the decisions of another Panel, unless compelling reasons exist for deviating from those principles; and

(b) The decisions of the plenary Commission.

22.3 The Commission shall not award any remedies other than those provided for in the present regulation.

22.4 No party may recover any costs from any other party in connection with proceedings before the Directorate or Commission.

22.5 The Commission may limit its decision to rights of possession of the claimed property where that would provide an effective remedy for the claim.

22.6 Where a claim is made by a family member of the property right holder in accordance with section 6.2, the Commission may decide any property right in the name of the property right holder, and make an order for possession in favour of the claimant. Such a decision shall not determine or affect any legal issue between the claimant and the property right holder or any other person not a party to the claim. Following the Commission's decision, local courts in Kosovo retain jurisdiction to adjudicate any legal issue not decided by the Commission.

22.7 In its decision, the Commission may:

(a) Decide such property rights as are necessary to resolve the claim;

(b) Make an order for possession of the property in favour of any party;

(c) Order the registration of any property right in the appropriate public record;

(d) Where necessary, to resolve a claim, vary the terms of any contract made for the purpose of avoiding a discriminatory law, so as to reflect the actual intention of the parties to the contract;

(e) Cancel any lease agreement in respect of a property which is subject to an order in terms of the present regulation and make ancillary orders to give effect to the cancellation;

(f) Refuse a claim; and

(g) Make any other decision or order necessary to give effect to the present regulation.

22.8 A decision shall contain:

(a) The date of adoption;

(b) The names of the parties and their representatives;

(c) The relief sought;

(d) The reasons for the decision, including the material facts and property rights found by the Commission; and

(e) The orders of the Commission.

22.9 Decisions shall be signed by the Chairperson, provided that if the number of claims decided in a session is high, the Chairperson may sign a cover decision approving all individual decisions identified in the cover decision. The individual decisions shall be certified by the Registrar. A copy of an original document signed by the Chairperson which has been sent to the Registrar by facsimile transmission of the original is sufficient authority for any actions taken pursuant to the document.

22.10 The Registrar shall publish the decisions of the Commission, or summaries of the decisions.

22.11 The Registrar is authorized to correct any textual errors in a Commission decision, which do not materially affect the rights of any party, if the Chairperson of the Commission agrees.

## Section 23

### **SUMMARY PROCEDURE**

23.1 Any claim under section 1.2(c) of UNMIK Regulation No. 1999/23, which is uncontested, may be considered by the Commission under a summary procedure.

23.2 In a summary procedure, the Commission may make an order for recovery of possession of the property if satisfied that there is evidence that the claimant was in uncontested possession of the property prior to 24 March 1999.

23.3 A summary decision shall contain:

(a) The date of adoption;

(b) The names of the parties and their representatives; and

(c) The operative provisions of the decision.

23.4 Section 23 does not prevent the Commission from deciding any other uncontested claim summarily.

#### Section 24

##### **PROVISIONAL MEASURES**

24.1 Upon the recommendation of the Directorate, whether at the request of the claimant or otherwise, the Commission may issue provisional measures of protection where it appears likely that, if provisional measures were not issued, a party would suffer harm, which cannot subsequently be remedied.

24.2 In exceptional circumstances, on the recommendation of the responsible law enforcement agencies and where necessary to control a continuing threat to public security, provisional measures may include the eviction of the current occupant of the claimed property, where the Commission is satisfied that there is evidence of prior uncontested occupation of the property by the claimant. An eviction order issued under this section may be executed by the responsible law enforcement authorities without notice.

#### Section 25

##### **RECONSIDERATION OF DECISIONS**

25.1 Following the establishment of two or more Panels of the Commission, any reconsideration of a matter shall be conducted by a different Panel than the one that decided the claim, unless the Chairperson of the Panel appointed to conduct the reconsideration, in consultation with the Chairperson of the Commission, determines that it should be conducted in plenary session.

25.2 In the reconsideration of a decision, the Commission or a Panel established by it shall consider all evidence and representations submitted with respect to the original claim and any new evidence and representations with respect to the reconsideration request. The Commission or Panel concerned shall either reject the reconsideration request, or issue a new decision on the claim.

#### Section 26

##### **ADDITIONAL RULES**

The Commission may adopt additional rules for carrying out its functions provided that they are consistent with the present regulation.

### **CHAPTER IV: GENERAL PROVISIONS**

#### Section 27

##### **IMPLEMENTATION**

The Special Representative of the Secretary-General may issue administrative directions for

the implementation of the present regulation.

Section 28

**APPLICABLE LAW**

The present regulation shall supersede any provision in the applicable law that is inconsistent with it.

Section 29

**ENTRY INTO FORCE**

The present regulation shall enter into force on 31 October 2000.

***Bernard Kouchner***  
***Special Representative of the Secretary-General***

## **ANNEX III**

### **ADDITIONAL RULES OF THE HOUSING AND PROPERTY CLAIMS COMMISSION**

The following rules are made by the Housing and Property Claims Commission in terms of section 26 of Regulation No. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission:

#### Rule 1 Definitions

In these rules, unless the context indicates otherwise –

“Commission” means the Housing and Property Claims Commission established in terms of section 2 of Regulation 1999/23, provided that “Commission” and “Chairperson” means “Commission” and “Chairperson of the Commission” in relation to plenary sessions, and “panel” and “Chairperson of the panel” in relation to panel sessions;

“Directorate” means the Housing and Property Directorate established in terms of section 1 of Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission;

“panel” means a panel of the Commission established in terms of section 2.2 of Regulation 1999/23;

“Registrar” means the Registrar of the Commission;

“Regulation 1999/23” means Regulation 1999/23 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission;

“Regulation 2000/60” means Regulation 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission.

#### Rule 2 Referral of Matters

2.1 A claim, a request for an advisory opinion, for provisional measures or for reconsideration, which is ready for consideration by the Commission, must be referred to the Registrar.

2.2 In cases where a both a category B and C claim is lodged on the same property, the claims must be referred to the Commission for a decision as an exception to the



Directorate's jurisdiction with regard to category B claims under section 11.1 of Regulation 2000/60.

Rule 3  
Opinions

3.1 The Directorate may request the Commission to provide an advisory opinion on the interpretation of –

- (a) Regulation 2000/60;
- (b) Regulation 1999/23; or
- (c) these rules.

3.2 A request for an advisory opinion must –

- (a) be made no later than 14 days before the next session of the Commission or any panel of the Commission;
- (b) identify the legal issue for determination;
- (c) explain how the different potential interpretations of the provision in question will impact on the work of the Directorate;
- (d) state whether the rights of any party to any current or anticipated claim before the Directorate or the Commission may be substantially affected by the opinion; and
- (e) give the reasons why the provision in question should not await interpretation in the context of a claim.

3.3 The Chairperson determines whether the request will be considered by a panel or a plenary session of the Commission.

3.4 The Commission may –

- (a) seek further information or submissions regarding the application, either before or at the Commission session which considers the application;
- (b) decline to give the advisory opinion sought;
- (c) give an advisory opinion;
- (d) limit the advisory opinion to a preliminary view; and
- (e) make such recommendations as it considers appropriate in the circumstances.

Rule 4  
Provisional Measures

4.1 A claimant or other person who, or agency which, requests a provisional measure of protection in terms of section 24 of Regulation 2000/60 must complete and lodge with the Directorate a form, determined by the Directorate, incorporating a sworn statement which sets out the following: –

- (a) the grounds on which the provisional measures are sought;
- (b) what harm is anticipated which cannot subsequently be remedied;
- (c) in a matter referred to in section 24.2, the nature of the threat to public security and the evidence of the claimant's prior uncontested occupation.

4.2 The Directorate may reject a request for provisional measures, which is manifestly without merit, unless the request is made in terms of section 24.2.

4.3 Where the Directorate is of the view that a request is not manifestly without merit, or where the request is made in terms of section 24.2, it must:

- (a) notify the Chairperson through the Registrar;
- (b) process the request as set out in its rules; and
- (c) refer the request to the Commission for decision.

4.4 A recommendation to the Commission that a provisional measure be granted must be accompanied by all relevant documentation, including:

- (a) the request;
- (b) the recommendation and the reasons for it;
- (c) where there was no service on interested parties, the reasons for this decision;
- (d) in a matter referred to in section 24.2 of Regulation 2000/60, any recommendation of the law enforcement agencies; and
- (e) a draft decision.

4.5 The Chairperson, in consultation with the Registrar, selects a panel to consider the request and decide the procedure for the further conduct of the matter with due regard to its urgency.

#### 4.6 The Commission –

- (a) may decline to order any provisional measures;
- (b) may order measures other than those sought;
- (c) may grant the measures sought subject to conditions; and
- (d) must, where the provisional measures were ordered without giving interested parties the opportunity to reply to the original request, provide in its order for the cancellation or amendment of the provisional measures on the request of any interested party if good reason is shown for doing so.

#### Rule 5 Reconsideration Requests

##### 5.1 Any person requesting reconsideration of a decision of the Commission in terms of –

- (a) section 14.1 of Regulation 2000/60, must lodge the request incorporating-
  - (i) details of the person requesting reconsideration, other interested parties and the property concerned; and
  - (ii) the evidence which was not considered by the Commission; and
  - (iii) the reasons why the evidence was not presented to the Commission, in the case of a request referred to in section 14(1)(a) of Regulation 2000/60; or
  - (iv) the grounds on which it is alleged that the Commission erred, in the case of a request referred to in section 14(1)(b) of Regulation 2000/60;
- (b) section 14.2 of Regulation 2000/60, must lodge the request on a form determined by the Directorate, incorporating details of-
  - (i) the person requesting reconsideration, other interested parties and the property concerned;
  - (ii) when the person requesting reconsideration first learned of the original claim and the reasons why he or she did not participate in the proceedings relating to the original claim; and
  - (iii) the grounds on which he or she seeks the reconsideration of the Commission's decision.

##### 5.2 The Directorate must-

(a) acknowledge receipt of the request in writing; and

(b) notify the other parties to the dispute of the reconsideration request, unless the dispute is determined by the Registrar to be manifestly without merit.

5.3 Any party wishing to oppose the reconsideration request must lodge a reply to the reconsideration request on a form determined by the Directorate no later than 15 days after being informed of the request.

5.4 If a request submitted is formally titled “reconsideration” or “appeal,” or the content of the submission challenges a Commission decision, the document must be forwarded to the Registry.

5.5 Requests that are not titled “reconsideration” or “appeal” and do not challenge a Commission decision are not considered requests for reconsideration under section 14 of UNMIK/REG/2000/60. The Directorate may take any appropriate action on such submissions.

5.6 If the Registrar determines that a request forwarded by the Directorate is manifestly without merit, a decision must be drafted rejecting the request on this basis.

5.7 The decision referred to in section 5.6 will be reviewed and signed by the Chairperson of the Commission at or between Commission sessions. If the number of requests resolved in a decision is high, the Chairperson may sign a cover decision resolving all individual requests identified in the cover decision.

5.8 If the Registrar determines that a request is not manifestly without merit, the request must be investigated by the Directorate.

5.9 If the Directorate recommends that the request be rejected, it must refer the request to the Commission with a referral report and the additional documents determined by the Commission.

5.10 If the Directorate recommends that the request be granted, it must refer the request to the Commission with a draft decision and the additional documents determined by the Commission.

5.11 The Chairperson must report to the Commission at its next session on all decisions taken between sessions in terms of rule 5.7.

## Rule 6 Execution of Commission Decisions

6.2 After the expiry of the 30-day period provided for in section 13.3 of Regulation 2000/60, the Registrar must issue a warrant of eviction.

6.3 The warrant of eviction must be in a form determined by the Registrar and include:

- (a) the number and date of the Commission decision requiring execution;
- (b) the claim number;
- (c) the warrant number;
- (d) the names of the parties to the claim;
- (e) the address of the property;
- (f) the date the decision was delivered to the party to be evicted;
- (g) the date of issue;
- (h) the signature of the Registrar;
- (i) the stamp of the Commission; and
- (j) a section for signature and a note of steps taken pursuant to the warrant by the executing official.

#### Rule 7 Sworn Statements

Any person making a sworn statement for purposes of these rules or for any other purpose relating to proceedings before the Commission shall do so before an officer of the Directorate and state:

“I solemnly declare that the contents of this statement are true and that I have not forged or unlawfully altered any documents attached to it.”

#### Rule 8 Certified Copies

The Commission will accept as a certified copy of the original –

- (a) any document certified by the Directorate as a true copy of the original in terms of section 8.2 of Regulation 2000/60; and
- (b) any copy which has been certified in terms of the Law on the Certification of Signatures, Manuscripts and Copies (Official Gazette SAPK No 37/71).

## **ANNEX IV**

### **EXECUTIVE DIRECTORS OF THE HPD AND REGISTRARS**

#### **Executive Directors**

Daniel Lewis, (Acting), 2000-July 2001

Lynn Hastings, (Appointed), July 2001-July 2002

Knut Rosandhaug, (Officer-in-Charge), August 2002-November

Martin Drake, (Appointed), November 2002-November 2003

Jay Carter, (Acting), December 2003-March 2004

Knut Rosandhaug, (Appointed), April 2004 to date

#### **Registrars**

Sandra Baffoe-Bonnie

Emmanuel Cole

Grete Dahlgard Berntzen

Jenna Mace

Monica Furustol

Charles Ehrlich

Kathinak Both

Adam Juszczak

David Chikovani

Tove Nilsen

Geir Johansen

Beshir Islami

Geir Johansen

Christine Buchmann

## ANNEX V

### STATISTICS OF CLAIMS AND DECISIONS

#### Claims resolved

Category A	1205
Category B	365
Category C	25283
Total	26853
Overtured Decisions	-63
Total First Instance HPCC Decisions	26790

#### Reconsideration Requests

Reconsideration request rejected/manifestly without merit	3371
Reconsideration request approved	1134
Total	4505
Overtured Decisions	-25
Total HPCC Reconsideration Decisions	4480

#### Decisions

First Instance Decisions	266
Reconsideration Decisions	95
Total	361