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**CLARIFICATION BY THE SPECIAL REPRESENTATIVE  
OF THE SECRETARY-GENERAL**

**Of**

**UNMIK Regulation No. 2000/60 of 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**

1. This document seeks to clarify a number of issues regarding the competence and jurisdiction of the Housing and Property Directorate ("HPD") and the Housing and Property Claims Commission ("HPCC"). This is not an exhaustive document but one that addresses a number of issues that the courts have had difficulty in interpreting.

**Claims within the exclusive competence of the HPD and HPCC**

2. UNMIK Regulation No. 1999/23 of 15 November 1999 established the HPD and HPCC. Section 2.1 of the Regulation defines the HPCC as an independent organ of the HPD created to settle private, non-commercial disputes concerning residential property referred to it by the HPD.

3. The HPCC, which consists of local and international Commissioners, handles claims that cannot be resolved by the HPD through mediation.

4. Section 1.2 of UNMIK Regulation No. 1999/23 authorizes the HPD to receive and register 3 categories of claims as an exception to the jurisdiction of the local courts. These claims must:

(a) be brought by natural persons (not by legal persons or institutions, etc.);

(b) involve residential property (including associated property)<sup>1</sup> that may be state, socially or privately owned; and

(c) relate to one of three specific situations defined by very specific time frames.

5. The three categories of claims are:

(a) Claims by natural persons whose ownership, possession or occupancy rights to residential real property were lost after 23 March 1989 on the basis of legislation which is discriminatory in its application or intent (so-called "category a" claims).

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<sup>1</sup> UNMIK Regulation No. 2000/60, Section 1, defines "associated property" as land and buildings owned or used by the claimant that form a unit with the residential property. This includes farmland and commercial property. By way of example, property reference by the same plot number is associated property.

(b) Claims by natural persons who entered into informal transactions<sup>2</sup> of residential real property after 23 March 1989 and up to 13 October 1999 on the basis of the free will of the parties, but which were unlawful under the existing law (so-called “category b” claims).

(c) Claims by natural persons who were the owners, possessors or occupancy right holders of residential real property before 24 March 1999 and who do not now enjoy possession of the property and have not voluntarily given up the ownership rights they had held before 24 March 1999 (so-called “category c” claims).

6. Under Section 2.5 of UNMIK Regulation No. 1999/23, the HPCC has exclusive jurisdiction to settle the categories of claims listed in paragraph 5 above. However, the HPCC may refer specific separate parts of such claims to the courts or administrative organs if the adjudication of those separate parts does not raise the issues listed in paragraph 5 above.<sup>3</sup>

7. The courts remain competent to receive and decide property disputes that do not fall under any of the foregoing categories.

8. Following an HPCC decision, the courts retain jurisdiction to adjudicate any legal issues not decided by the HPCC.<sup>4</sup>

#### **Provisional measures of protection within the power of the HPCC**

9. Pending the investigation or resolution of a claim, the HPCC may issue provisional measures of protection where necessary to secure the orderly and expeditious resolution of the claim,<sup>5</sup> or if it appears likely that, if provisional measures were not issued, a party would suffer irreparable harm.<sup>6</sup>

10. Under Section 24.2 of UNMIK Regulation No. 2000/60, in exceptional circumstances, on the recommendation of the responsible law enforcement agencies and where it is necessary to control a continuing threat to public security, provisional measures may include the eviction of the current occupant of the claimed property. An order for such an eviction may be executed by responsible law enforcement authorities without notice.

#### **How a court may determine whether a real property claim is within its competence or that of the HPD and HPCC**

11. To determine whether a claim involving real property is within its competence or that of the HPD and HPCC, a court should determine as follows:

<sup>2</sup> UNMIK Regulation No. 2000/60, Section 1, defines “informal transactions” as any real property transaction that was unlawful under the provisions of the Law on Special Conditions Applicable to Real Estate Transactions or other discriminatory law, which would otherwise have been a lawful transaction.

<sup>3</sup> UNMIK Regulation No. 1999/23, Section 2.5, and UNMIK Regulation No. 2000/60, Section 22.1.

<sup>4</sup> UNMIK Regulation No. 2000/60, Section 22.6.

<sup>5</sup> UNMIK Regulation No. 2000/60, Section 10.5.

<sup>6</sup> UNMIK Regulation No. 2000/60, Section 24.1.

(a) Whether the claim involves residential real property, which may include associated property (i.e. land and/or buildings used by the claimant that form a unit with the residential property and can include farmland and commercial property). In determining the answer to this question, the court must look at the status of the property at the time the ownership right was lost, not now.<sup>7</sup> If the answer is no, then the court has jurisdiction.

(b) If the answer is yes, then the court should ask whether the claim involves a dispute over ownership, possession or an occupancy right. If the answer is no (for example the claim involves other real property matters such as property boundaries, rent agreements, property use, nuisance disputes, damage or destruction to property, etc.) then the court has jurisdiction.

(c) If the answer is yes, then the court should ask whether the claim involves one of the three categories of claims listed in paragraph 5 above, with due consideration to the dates mentioned therein, i.e., does the claim involve:

- i. loss of ownership, possession or occupancy rights, which took place subsequent to 23 March 1989 and was based on legislation that was discriminatory in its application or intent? or
- ii. informal transactions that took place between 23 March 1989 and 13 October 1999<sup>8</sup> on the basis of the free will of the parties, but were unlawful under existing law? or
- iii. illegal occupation that occurred after 24 March 1999 where the claimant was the owner, occupancy right holder or lawful possessor of the illegally occupied property?

If the court finds that the claim does not involve any of the foregoing situations, then the court has jurisdiction. If the claim involves one of the foregoing situations, then the court does not have jurisdiction.

12. When a court determines that it cannot hear a case, it should declare that the matter falls outside its jurisdiction and that accordingly it does not have competence to consider or adjudicate the claim.

**Other questions that may arise when a court considers whether a particular real property claim falls within its jurisdiction**

13. In cases where there are multiple claims to be dealt with, some of which fall within the competence of the HPD and others within the competence of the courts (such as a claim for loss of ownership coupled with a claim for damage to the property lost), ownership issues, within the competence of the HPD, are to be dealt with first.

<sup>7</sup> For example, the fact that a particular property is presently being put to commercial use as a restaurant or store is irrelevant. The determining factor is whether the property was being used for residential purposes at the time the ownership right was lost.

<sup>8</sup> This is the date on which UNMIK Regulation No. 1999/10 On the Repeal of Discriminatory Legislation Affecting Housing and Rights in Property entered into force.

14. Claims that otherwise fall within the competence of the HPD as defined above, and involve husbands and wives as joint owners, are only within the competence of the HPD if the claimant can prove direct ownership in his or her own right through documentary or other sufficient indicia of ownership. If such direct ownership cannot be established, such claims shall be deemed to involve family law matters within the competence of the courts.

### **Provisions of the Law on Housing Relations that have been amended by UNMIK Regulation 2000/60**

15. Section 5 of UNMIK Regulation No. 2000/60 places a temporary ban on the disposal of socially owned apartments until the deadline for submitting claims to the HPD expires (1 December 2001)<sup>9</sup> or until a particular claim is resolved, whichever is later.

16. Under Section 5.1 of the Regulation, this temporary ban applies to any person who purchased a socially owned apartment from the allocation right holder<sup>10</sup> 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<sup>11</sup> of the apartment before 23 March 1989.

17. Section 5.2 of the Regulation provides that, until the deadline for submitting claims to the HPD has expired, or until the resolution of any claim for a socially owned apartment made under this Regulation, whichever is later, a person to whom Section 5 applies will be considered to be the lawful possessor of the apartment in question, but may not transfer the apartment to any other person except as part of an amicable settlement of the claim. Any contract relating to a sale, exchange or gift made in contravention of this section shall be null and void.

18. Section 6 of UNMIK Regulation No. 2000/60 suspends Article 3 of the Law on Housing Relations, which deals with the entitlement to allocate apartments. The ability of the allocation right holder to continue to allocate socially owned apartments has been suspended. Section 6 provides that no occupancy right to a socially owned apartment may be terminated without either the consent of the occupancy right holder or the HPD, or an order of the HPCC.<sup>12</sup>

19. Section 6(c) of UNMIK Regulation No. 2000/60 amends Article 24 of the Law on Housing Relations by permitting an occupancy right holder to lease the whole of a socially owned apartment to another person.

### **Miscellaneous items**

20. The courts must cooperate with the HPD. Under Section 10.2 of UNMIK Regulation No. 2000/60, the HPD is entitled to free access without charge to any records in Kosovo, including court

<sup>9</sup> UNMIK Regulation No. 2000/60, Section 3.2, provides that the deadline for submitting claims to the HPD is 1 December 2001. However, the deadline for submission of claims may be extended by announcement of the Special Representative of the Secretary-General.

<sup>10</sup> UNMIK Regulation No. 2000/60, Section 1, defines "allocation right holder" as the holder of the right of disposal of a socially owned apartment.

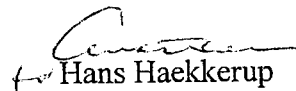
<sup>11</sup> UNMIK Regulation No. 2000/60, Section 1, defines "occupancy right" holder as the holder of a right of use of a socially owned apartment under a contract on use of the apartment made under the Law on Housing Relations or the Law on Housing.

<sup>12</sup> A socially owned apartment, therefore, can no longer be re-allocated if the occupancy right holder was not in residence for more than one year.

records, relevant to the settlement of a claim or for any other verification purposes. Under Section 2.4 of UNMIK Regulation No. 1999/23, the HPCC is entitled to the same.

21. The only appeal from decisions of the HPCC is to another panel or a plenary session of the HPCC, not to the courts.<sup>13</sup> Under Section 2.7 of UNMIK Regulation No. 1999/23, "[f]inal decisions of the HPCC are binding and enforceable, and are not subject to review by any other judicial or administrative authority in Kosovo."

22. Under Section 17.6 of UNMIK Regulation No. 2000/60, members of the HPCC and staff of the HPCC and HPD are immune from any civil or criminal proceedings for acts carried out within the scope of their official duties.



Hans Haekkerup  
Special Representative of the Secretary-General

12 April 2001

To: The President of the Supreme Court of Kosovo  
The President of the Commercial Court  
The President of the Higher Court for Minor offences  
All Presidents of the District Courts  
All Presidents of the Municipal Courts  
All Presidents of the Municipal Courts for Minor offences  
The Public Prosecutor of Kosovo  
All District Public Prosecutors  
All Municipal Public Prosecutors

<sup>13</sup> UNMIK Regulation No. 2000/60, Section 25.1.