CHAPTER III

INSTITUTIONS RESPONSIBLE FOR PROPERTY RESTITUTION: HOUSING AND PROPERTY DIRECTORATE AND HOUSING AND PROPERTY CLAIMS COMMISSION

I. INTRODUCTION

The independent property restitution mechanism established under UNMIK Regulation 1999/23 was composed of two distinct organs, an administrative body, namely the Housing and Property Directorate (‘the HPD’) which was responsible for collecting and processing claims, and the Housing and Property Claims Commission (‘the HPCC’) which was the quasi-judicial branch conferred with exclusive jurisdiction to adjudicate claims.

In conjunction with its mandate to decide property claims and provide justice to victims who suffered violations of property rights, the HPD/HPCC process was expected to provide effective remedies to claimants within a reasonably prompt period of time and in a manner which was economical and consistent.¹

In fact a primary objective identified by the Interagency Housing and Property Task Force was that the mechanism ‘provide an effective remedial procedure’ which permitted claimants to have property disputes ‘adjudicated in an independent manner.’²

The requirement to provide a remedy within a reasonable period of time as guaranteed under international human rights law was also relevant due to the magnitude of the housing crises in Kosovo, and the socio-economic conditions of

² 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 Leckie, S., (UNCHS (Habitat)) 30 August 1999.
refugees and displaced persons all of which demanded an expeditious and prompt resolution of claims.  

The legislation establishing the HPD/HPCC process made numerous references to the requirement for expeditious decision-making practices to be invoked and for claims to be resolved promptly. The Preamble to UNMIK Regulation 1999/23 establishing the HPD/HPCC expressly stipulated that the process was being established for the purpose of “achieving efficient and effective resolution of claims concerning residential property”. Further, UNMIK Regulation 2000/60 which prescribed the HPCC’s rules of procedure and evidence permitted the adoption of mass claims processing procedures where they were considered necessary “to secure the orderly and expeditious resolution of claims” or “to expedite its decision-making.”

Additionally, as the process was funded from voluntary contributions which had to be secured largely by those responsible for the management and administration of the HPD itself, efficiency and economy were fundamental concerns.  

These procedural prerequisites and objectives coupled with its origins as a response to the housing and property crises in Kosovo distinctly shaped the setup of the HPD/HPCC mechanism and in particular the procedural and evidentiary techniques that were utilized in the resolution of claims.  

The process was established and operated outside the framework of the national judicial system due to the lack of capacity in the local courts in the fall of 1999 and also taking into account the sensitive nature of these disputes and the climate of acute ethnic tension. The HPD/HPCC’s organizational structure which embodied an administrative branch and a quasi judicial component constituted an ad hoc legal system, or a self-contained regime which was fully equipped with its own procedural rules for the collection, processing and resolution of claims. The HPD played an active role throughout all stages of the claims resolution process and was responsible for the overall management and efficiency of the mechanism which included the collection and processing of claims, and the implementation of HPCC decisions through the execution of eviction orders where necessary. The HPD/HPCC’s functional independence was enhanced by virtue of the fact that it could adopt additional rules for carrying out its functions. Its rules of procedure and evidence reflected and recognized its nature as a special (sui generis) regime and equipped it with the necessary tools to allow it to handle its voluminous caseload in an efficient manner. The process was designed to be a hybrid of a ‘mass claims processing system’ which was widely recognized as the most effective way of providing individual remedies for victims of

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3 The situation on the ground and Kosovo’s housing crises is considered in Chapter 2 of this publication.
4 See sections 19.5 and 19.7 of UNMIK Regulation 2000/60.
5 Chapter 12 of this publication considers funding arrangements for the HPD/HPCC process.
6 The procedural and evidentiary techniques for the resolution of claims are considered throughout Chapters 4–7 of this publication.