CHAPTER XI

RESTITUTION AND COMPENSATION

I. INTRODUCTION

The HPD/HPCC process sought to ensure restitution for claimants who had suffered property law violations arising from discrimination and armed conflict in Kosovo during the period 1989–1999. Category A claimant’s whose occupancy rights were cancelled between 23 March 1989 and 24 March 1999 as a result of discrimination were entitled to restitution in kind, 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, in which case compensation was the appropriate remedy. Category C claimants who lost possession of property as a result of circumstances arising out of the NATO air campaign were entitled to an order of repossession regardless of the nature of their property rights, provided their possession of the property was not manifestly unlawful.

However the legal framework which governed restitution was too narrowly drawn and did not provide a remedy for all claimants who lost legitimately held property rights. In relation to those who lost property rights pre-1989 as a result of discrimination, the Regulation limited the right to restitution to those with perfected occupancy or ownership rights. For those who lost possession of property in the aftermath of the 1999 armed conflict, where there was a competing valid occupancy right claim filed over the property, the Regulation prescribed that the category A claimant be awarded restitution in kind but only secured a remedy in the form of compensation for the those category C claimants who could prove ownership rights over the property. Consequently, those who held less than ownership rights but held other legitimate forms of property rights over the contested property had their claims dismissed without any form of redress.

Another group of claimants who were left without redress were claimants with rights over property which had either been damaged or destroyed as UNMIK Regulation 2000/60 did not prescribe for an award of compensation for damage to or destruction of property.
This chapter describes the restitution framework from the perspective of the limits of its range and application, and the consequences and options for claimants who did not come within its narrow framework to pursue a remedy for loss of property rights.

Section 4 of UNMIK Regulation 2000/60 governed the right to restitution and compensation and prescribed as follows:

Section 4 of UNMIK Regulation 2000/60

“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.”