CHAPTER XIII

FEATURES OF THE HPD/HPCC PROCESS AND OVERALL CONTRIBUTION TO PEACE BUILDING IN KOSOVO

I. ESSENTIAL FEATURES OF THE HPD/HPCC PROCESS

1. Due Process

The HPD/HPCC’s rules of procedure and evidence conferred it with the procedural flexibility to deal with thousands of claims efficiently. The rules adopted techniques which facilitated rapid decision making, departed from the procedural and evidential requirements applicable in traditional adversarial court proceedings and safeguarded the core concepts of due process and fair procedures.

Chapter II of UNMIK Regulation 2000/60 prescribed provisions which secured a careful and thorough approach to claim collection and an individual investigation of each claim. The procedure was essentially a written procedure, with oral hearings being held only in exceptional circumstances. A careful claim collection and registration, together with a comprehensive interview conducted with both claimants and respondents ensured their meaningful participation in the process and that all relevant evidence was presented in relation to claims.\(^1\) The provisions governing notification of parties ensured those with a legal interest in the proceedings were afforded the opportunity to participate by submitting written evidence or submissions.\(^2\) Further, the placing of the verification burden and the onus to search for documents on the HPD greatly assisted claimants and respondents in bringing claims and filing replies, and ensured the inclusion of all particulars relevant to a determination of the claim.

\(^1\) As to evidence gathering and the filing of claims, see Chapter V of this publication.
\(^2\) See further Chapters IV and VIII of this publication respectively.
Section 2.6 of UNMIK Regulation 1999/23 required that the HPCC’s rules of evidence and procedure include provisions on reconsideration of decisions, thus ensuring another avenue for participation to be built into the process. In line with this provision, the parties to the claim and other interested parties (including legal entities) had the option of invoking a review process where they wished to contest a decision of the HPCC. Section 14 of UNMIK Regulation 2000/60 provided for a reconsideration of HPCC 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.

In relation to the implementation of decisions, section 13 of UNMIK Regulation 2000/60 set down detailed provisions governing the execution of eviction orders, which included provisions on the notification of occupants and a discretion to delay execution pending the resolution of the housing needs of the occupant or on such other grounds at the HPD deemed fit.3

2. Impartiality and Neutrality

The HPD and HPCC were impartial, neutral and independent bodies which were mandated to achieve an efficient and effective resolution of claims concerning residential property and provide durable solutions to Kosovo’s housing crises.

The process prided itself on being impartial and implementing all aspects of its mandate in an objective and neutral manner, regardless of ethnicity, and in accordance with the legal framework and procedures set down in the applicable law. In relation to the processing of claims, the HPCC issued instructions to HPD personnel which determined the order in which claims were to be processed and referred for adjudication, thereby eliminating the risk of personnel “cherry picking” claims and prioritising certain claims over others.4 International oversight at all stages of the claims resolution process ensured strict adherence to procedures and the applicable law which served the interests of all claimants equally, and guaranteed the integrity of the process down to the resolution of the very last claim.

While the implementation of the HPD/HPCC’s mandate was in some cases politically sensitive, particularly in relation to the enforcement of HPCC decisions, the HPD performed its legal and administrative functions solely in the interests of the lawful property right holder, to the exclusion of political, economic and other considerations.5 All HPCC decisions were implemented in favour

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3 The implementation of HPCC decisions is considered in detail in Chapter VII of this publication.
4 See further, Chapters V and VI of this publication.
5 See further, Chapters XII and XIV of this publication.