

**REGULATION NO. 2000/60**

UNMIK/REG/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.

<sup>1</sup> Official Gazette SAPK, No. 11/83, 29/86, 42/86 (hereafter “the Law on Housing Relations”).

<sup>2</sup> Official Gazette SRS, No. 50/92, 49/95 (hereafter “the Law on Housing”).

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***