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Administration Mission
in Kosovo



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Intérimaire des Nations Unies
au Kosovo

UNMIK/REG/2006/50
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REGULATION NO. 2006/50

**ON THE RESOLUTION OF CLAIMS RELATING TO PRIVATE
IMMOVABLE PROPERTY, INCLUDING AGRICULTURAL
AND COMMERCIAL PROPERTY**

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,

For the purpose of provisionally suspending UNMIK Regulation No. 2006/10 and provisionally providing for the resolution of claims relating to private immovable property, including agricultural and commercial property, without such claims being referred to the courts with territorial and subject-matter jurisdiction over them,

Hereby promulgates the following:

Chapter I

The Status of UNMIK Regulation No. 2006/10

Section 1

UNMIK Regulation No. 2006/10

1.1 Upon the entry into force of the present Regulation, the legal validity of UNMIK Regulation No. 2006/10 shall be provisionally suspended, without prejudice to Sections 16, 17 and 18 of UNMIK Regulation No. 2006/10 which shall continue to be legally valid.

1.2 A decision or action validly taken pursuant to UNMIK Regulation No. 2006/10 before the entry into force of the present Regulation shall continue to be legally valid.

Chapter II **The Kosovo Property Agency**

Section 2 The Kosovo Property Agency

The Kosovo Property Agency established pursuant to UNMIK Regulation No. 2006/10 shall function as an independent body pursuant to Chapter 11.2 of the Constitutional Framework.

Section 3 Responsibilities of the Kosovo Property Agency

3.1 The Kosovo Property Agency shall, through the Executive Secretariat, have the competence to receive and register and, through the Property Claims Commission, have the competence to resolve, subject to the right of appeal to the Supreme Court of Kosovo, the following categories of conflict-related claims involving circumstances directly related to or resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999:

- (a) Ownership claims with respect to private immovable property, including agricultural and commercial property, and
- (b) Claims involving property use rights in respect of private immovable property, including agricultural and commercial property,

Where the claimant is not now able to exercise such property rights.

3.2 Nothing in this section shall prejudice the rights of claimants to pursue before courts of competent jurisdiction claims that do not involve the claims described in section 3.1.

Chapter III

Organization of the Kosovo Property Agency

Section 4

Organization of the Kosovo Property Agency

The Kosovo Property Agency shall be composed of a Supervisory Board, an Executive Secretariat and a Property Claims Commission (the Commission).

Section 5

The Supervisory Board of the Kosovo Property Agency

5.1 A Supervisory Board shall supervise the work of the Kosovo Property Agency and provide administrative oversight, overall direction and policy guidance. It will not participate in the process by which the Commission adopts its decisions on individual claims.

5.2 The Supervisory Board shall be composed of five (5) members. Within a month of the entry into force of the present Regulation, the Special Representative of the Secretary-General shall appoint the five members of the Supervisory Board, two of whom shall be nominated by the Prime Minister. The Special Representative of the Secretary-General shall designate as the Chairperson one of the three (3) members of the Supervisory Board who has not been nominated by the Prime Minister.

5.3 If the Special Representative of the Secretary-General determines that it would be appropriate, six (6) months after the entry into force of the present Regulation he shall appoint a further two (2) members to the Supervisory Board on the nomination of the Prime Minister who shall replace the two members other than the Chairperson who were not nominated by the Prime Minister.

5.4 Members of the Supervisory Board shall serve for a term of one year, which may be renewed.

5.5 No person may become or remain a member of the Supervisory Board if such person:

- (a) Has been convicted, after due process and in accordance with international standards, to imprisonment of one year or more;
- (b) Has been excluded or suspended for professional misconduct from the exercise of his or her profession; or

- (c) Has interests conflicting with his or her responsibilities under the present Regulation.

5.6 A member of the Supervisory Board may be removed from office by the Special Representative of the Secretary-General if he or she:

- (a) Becomes ineligible to serve as a member of the Supervisory Board under section 5.5;
- (b) Uses his or her office in a manner that is not consistent with the official duties and responsibilities set out in the present Regulation; or
- (c) Grossly neglects his or her duties under the present Regulation.

Section 6 Executive Secretariat

6.1 The Executive Secretariat shall have a Director and a Deputy Director who will be appointed by the Special Representative of the Secretary-General. The Deputy Director shall be nominated by the Prime Minister.

6.2 The responsibilities of the Executive Secretariat shall include the registration of claims and replies to claims, the notification of parties and the preparation of claims and replies to claims for consideration by the Commission. The Executive Secretariat shall have authority to dismiss claims that are manifestly not receivable and clearly not within the scope of the jurisdiction of the Kosovo Property Agency.

6.3 The duties and responsibilities of the Executive Secretariat may be set out in detail in an Administrative Direction issued by the Special Representative of the Secretary-General.

Section 7 Property Claims Commission

7.1 The Special Representative of the Secretary-General shall appoint the members of the Commission and shall designate one member as the chairperson. Members of the Commission shall be experts in the field of housing and property law and competent to hold judicial office.

7.2 The Commission shall be composed of two (2) international members and one local member. The local member shall be appointed by the Special Representative of the Secretary-General on the nomination of the President of the Supreme Court of Kosovo.

7.3 Six (6) months after the entry into force of the present Regulation, if the Special Representative of the Secretary-General deems it appropriate, he may appoint a further local member of the Commission who shall replace the international member who is not the chairperson.

7.4 The Special Representative of the Secretary-General may establish additional panels of the Commission in consultation with the Commission.

Section 8

Appointment and Removal from Office of Members of the Property Claims Commission

8.1 Members of the Commission shall be appointed by the Special Representative of the Secretary-General for an initial term of one year and they may be re-appointed for one or more additional terms.

8.2 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 failure to perform the duties of office.

8.3 A member of the Commission shall be disqualified from participating in the proceedings where conditions for disqualification as set forth in Article 29 of the Law on Administrative Procedures exist.

8.4 Persons with a legal interest in the proceedings may request disqualification of a member of the Commission by a request made in writing to the Chair of the Commission.

8.5 The Commission shall decide upon disqualification of members of the Commission.

Section 9
Submission of claims

- 9.1 A claim as defined in section 3.1 of the present Regulation may be submitted to the Executive Secretariat by any natural or legal person.
- 9.2 The Executive Secretariat shall receive claims at offices established for this purpose in Kosovo from the date of entry into force of the present Regulation.
- 9.3 The Executive Secretariat shall establish a procedure to facilitate the receipt of claims from refugees and internally displaced persons currently residing outside of Kosovo.

Section 10
The Procedure for the processing of claims

- 10.1 Upon receipt of a claim, the Executive Secretariat shall notify and send a copy of the claim to any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and make reasonable efforts to notify any other person who may have a legal interest in the property. In appropriate cases, such reasonable efforts may take the form of an announcement in an official publication of the Executive Secretariat.
- 10.2 Any person other than the claimant who is currently exercising or purporting to have rights to the property which is the subject of the claim and/or any other person who may have a legal interest in the claimed property shall be a party to the claim and the related proceedings, provided that such person informs the Executive Secretariat of his or her intention to participate in the administrative proceedings within thirty (30) days of being notified of the claim by the Executive Secretariat in accordance with section 10.1.
- 10.3 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.
- 10.4 Within thirty (30) days of receiving a copy of the claim, the receiving party may submit to the Executive Secretariat a reply to the claim.

Section 11
The Proceedings and Decisions of the Property Claims Commission

11.1 Except as otherwise provided in the present Regulation or in an Administrative Direction implementing the present Regulation, the provisions of the Law on Administrative Procedures shall be applicable *mutatis mutandis* to the proceedings of the Commission.

11.2 The Commission shall reach its decisions on the basis of the claim and the reply or replies.

11.3 The Commission may:

- (a) Join or consolidate claims for the purpose of their consideration and reaching decisions thereon where there are common legal and evidentiary issues to be considered;
- (b) Delegate to the staff members of the Executive Secretariat, assigned by the Director of the Executive Secretariat to service the Commission, certain claims review and evidentiary review functions, subject to the supervision and final approval of the Commission;
- (c) Use computer databases, programs and other electronic tools in order to expedite its decision-making; and
- (d) Take any other procedural measures it considers appropriate to expedite its decision-making.

11.4 The Commission shall dismiss the whole or part of the claim where:

- (a) The claimant has failed to file a complete claim in accordance with the procedures set out in the present Regulation;
- (b) The claim is not within the scope of jurisdiction of the Kosovo Property Agency;
- (c) The claim has previously been considered and decided in a final administrative or judicial decision.

11.5 At the claimant's request and upon recommendation of the Executive Secretariat, the Commission may grant provisional measures of protection including an interim injunction where the claimant has established a *prima facie*

claim and would, if these provisional measures were not granted, suffer irreparable damage.

11.6 Where the interests of justice so require, the Commission may request and consider further written submissions from the parties or hold a hearing of all parties involved, including witnesses and experts. In such cases the Commission shall act expeditiously.

11.7 Minutes shall be prepared and maintained for all hearings before the Commission. The minutes shall constitute evidence of the content of the hearings.

11.8 A decision of the Commission on a claim shall be legally binding without prejudice to the right of appeal under section 12 and the Kosovo Property Agency shall notify the parties accordingly. The Kosovo Property Agency shall serve copies of the decision on the parties.

Chapter IV The Right of Appeal

Section 12 Appeals

12.1 Within thirty (30) days of the notification to the parties by the Kosovo Property Agency of a decision of the Commission on a claim, a party may submit through the Executive Secretariat of the Kosovo Property Agency to the Supreme Court of Kosovo an appeal against such decision.

12.2 Except otherwise provided in the present Regulation or in an Administrative Direction implementing the present Regulation, the provisions of the Law on Civil Procedures shall be applicable *mutatis mutandis* to the appellate proceedings before the Supreme Court.

12.3 The appeal may be filed on the grounds that:

- (a) The decision involves a fundamental error or serious misapplication of the applicable material or procedural law; or
- (b) The decision rests upon an erroneous or incomplete determination of the facts.

12.4 On receipt of the appeal the Kosovo Property Agency through its Executive Secretariat shall send copies to the other party or parties and shall send the appeal and the related file of the Commission to the Supreme Court of Kosovo.

12.5 Once an appeal has been made to the Supreme Court of Kosovo by a party, the decision of the Commission is stayed and cannot be executed as long as the case is pending at the Supreme Court of Kosovo.

12.6 If requested, the Executive Secretariat of the Kosovo Property Agency shall provide a dissatisfied party information and guidance on the procedure to be followed in the preparation of an appeal to the Supreme Court of Kosovo. Also, the Executive Secretariat may establish a procedure to facilitate the receipt of appeals and its transfer to the Supreme Court of Kosovo from refugees and internally displaced persons currently residing outside of Kosovo.

12.7 Within thirty (30) days of receipt of a copy of the appeal, the other party or parties shall submit a written response to the Supreme Court through the Secretariat of the Kosovo Property Agency.

12.8 The Supreme Court of Kosovo shall decide on appeals in a panel of three (3) judges authorized by the Special Representative of the Secretary-General, of whom two shall be international judges and one shall be a judge who is a resident of Kosovo.

12.9 If the interests of justice so require, the Supreme Court of Kosovo may request reassessment or further clarification on the appealed decision from the Commission. In such cases the Commission shall act expeditiously on such requests.

12.10 If the interests of justice so require, on receipt of a written response from a party other than the appellant submitted in accordance with section 12.7 of the present Regulation, the Supreme Court of Kosovo may request and consider further written submissions by the parties or hold an oral hearing. In such cases the Supreme Court of Kosovo shall act expeditiously.

12.11 New facts and material evidence presented by any party to the appeal shall not be accepted and considered by the Supreme Court unless it is demonstrated that such facts and evidence could not reasonably have been known by the party concerned. If such facts and material evidence are accepted, the Supreme Court may request the Commission's evaluation and observations thereon. In such cases the Commission shall act expeditiously on such requests.

12.12 Within fifteen (15) days of the date on which the Supreme Court of Kosovo determines that it has received all the evidence that it requires to decide the appeal, it shall render a decision on the appeal which it shall deliver to the Kosovo Property Agency. The Kosovo Property Agency through its Executive Secretariat shall serve the Supreme Court's decision on the appeal on the parties.

Section 13
Decision on the Appeal

13.1 The Supreme Court of Kosovo as a rule decides on the appeal based on the facts presented to and considered by the Commission.

13.2 The Supreme Court may, where warranted, in the light of evidence properly adduced, make its own determination on facts evaluated by the Commission.

13.3 The Supreme Court shall:

- (a) Accept the appeal and make a new decision with any modifications that may be required in the decision of the Commission;
- (b) Dismiss the appeal as inadmissible on procedural grounds; or
- (c) Reject the appeal as unfounded and confirm the decision of the Commission.

13.4 The Supreme Court of Kosovo may decide upon joined or consolidated appeals where such joinder or consolidation has been decided upon by the Commission in accordance with section 11.3 (a) of the present Regulation.

13.5 In interpreting the present Regulation or any Administrative Direction implementing the present Regulation, the Supreme Court of Kosovo may take into account, with such modifications or qualifications as it considers necessary or appropriate in the given circumstances, the provisions of the applicable laws on the powers of the Supreme Court relating to civil procedures.

13.6 The decisions of the Supreme Court of Kosovo are final and enforceable and cannot be challenged through ordinary or extraordinary remedies.

Chapter V
Execution of Decisions and Remedies

Section 14
Execution of Decisions

14.1 The decision of the Commission shall become executable fifteen (15) days following the date of notification of the decision to the parties if no appeal has been made to the Supreme Court of Kosovo.

14.2 The decision of the Supreme Court of Kosovo shall become executable fifteen (15) days following the date of notification of the decision to the parties.

Section 15
Remedies

Remedies for the execution of a decision may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure and demolition of unlawful structures and auction.

Section 16
Eviction

16.1 In the event of a decision involving the eviction of persons, the Kosovo Property Agency shall deliver a decision confirming an order for eviction to the current occupant of the claimed property.

16.2 A decision confirming an order for eviction is executable after delivery. The eviction order may be executed against any person occupying the property at the time of the eviction.

16.3 An eviction shall be executed by the responsible officer of the Kosovo Property Agency, with the support of the law enforcement authorities. The said officer and authorities must be in possession of a warrant signed by the Director of the Executive Secretariat of the Kosovo Property Agency.

16.4 During the execution of an eviction order, any person who fails to obey an instruction of the responsible officer to leave the property may be removed by the law enforcement authorities. In the event that movable property is also removed in connection with the execution of the eviction order, the Kosovo Property

Agency shall make reasonable efforts to minimize the risk of damage to or loss of such property.

16.5 The Kosovo Property Agency shall notify the claimant and any person occupying the property of the scheduled date of the eviction. Following the execution of an eviction order, if the claimant 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 shall be subject to removal from the property by the law enforcement authorities.

Chapter VI Transitional Provisions

Section 17

Claims before the Housing and Property Directorate

The Kosovo Property Agency shall exercise the powers of execution in relation to any decision or eviction order of the Housing and Property Claims Commission which on the date of the entry into force of UNMIK Regulation No. 2006/10 may be executed, but has not been executed, by the Housing and Property Directorate. In exercising such powers of execution, the Kosovo Property Agency shall have the rights, obligations, responsibilities and powers that the Housing and Property Directorate had before the entry into force of UNMIK Regulation No. 2006/10.

Section 18

Claims before courts

The provisions of the present regulation shall apply to any claim under section 3.1 of the present Regulation which has been submitted to a court of competent jurisdiction, provided that judicial proceedings in respect of such claim have not commenced prior to the date of entry into force of the present Regulation.

Section 19

Restitution of occupancy rights to socially owned apartments lost as a result of discrimination

The Kosovo Property Agency shall succeed to the responsibilities of the Housing and Property Directorate under Section 4 of UNMIK Regulation No. 2000/60 on the restitution of occupancy rights to socially owned apartments lost as a result of

discrimination. It shall implement its provisions in accordance with criteria and procedures adopted by the Kosovo Property Agency for the calculation of the amounts referred to in Section 4 of UNMIK Regulation No. 2000/60.

Chapter VII **Final Provisions**

Section 20 Applicable Law


The present Regulation shall supersede any provision in the applicable law, which is inconsistent with it.

Section 21 Implementation

The Special Representative of the Secretary-General may issue Administrative Directions for the implementation of the present Regulation.

Section 22 Entry into Force

The present Regulation shall enter into force on 16 October 2006, without prejudice to the continuing authority of the Housing and Property Claims Commission to adjudicate claims which have already been submitted to the Housing and Property Directorate and to act on requests for reconsideration of decisions in accordance with UNMIK Regulation No. 2000/60. The present Regulation shall remain in force until 31 December 2008. The Special Representative of the Secretary-General or the competent successor authority may extend the validity of the present Regulation for a further period(s).



Joachim Rücker
Special Representative of the Secretary-General